MINIMUM RURAL LAND HOLDING SIZE REQUIREMENT UNDER LAND LAWS OF ETHIOPIA: EXPERIENCE FROM GURAGHE ZONE

LL.M THESIS IN LAND AND ENVIRONMENTAL LAW

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ABSTRACT

Land is interconnected to political cultural socio-economic and identity aspects. It has also human right components for it is a base for livelihood particularly in rural areas. Terms and conditions to access land is important element that determines rights and duties in relation to the land holding. The terms and conditions recognized are complex in Ethiopia for their own policy reasons; thus subjected to criticism for restrictive nature. Even though it needs further empirical study which reflects the interest of women, peasants and pastorals; a debate on the current land tenure policy of Ethiopia is still regarded as basic controversial subject and concern of researchers. This thesis provides a comprehensive analysis and description of minimum rural land holding size requirements recognized under Ethiopian land law; policy reason; their impacts on transfer of rights and the practical experience of Guraghe Zone. The researcher found that, legal rights, duties and requirements provided to access, use and transfer rural land lacks implementation; thus traditional perceptions and practices are operating well than statutory law governing rural land access, use and transfer. There is mismatch between policy and legal frame work and the practice which supports implementation of principles and rules of equal access rights and minimum conditions provided under the law. Even in some instances the legal requirement seems to be applied is not for all equally. Women are still vulnerable in relation to access, control and use right of rural land holding.

LIST OF ABBREVIATION

AGP	Agricultural Growth Production
AILAA	Agricultural Investment Land Administration Agency
AU	African Union
CSA	Central Statistical Agency of Ethiopia
EMA	Ethiopian Mapping Agency
EU	European Union
FAO	Food and Agriculture Organization
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International covenant on Civil and Political Rights
ICESCR	International covenant on Economic, Social and Cultural Rights
INSA	Information Network Security Agency
LAUD	Land Administration and Use Directorate
MoA	Ministry of Agriculture
NSDI	National Spatial Data Infrastructure
PASDEP	Plan for Accelerated and Sustained Development to End Poverty
RLACs	Rural Land Administration Committees
SNNPR	Southern Nations, Nationalities and Peoples Region
UDHR	Universal Declaration of Human Right

GLOSSERY

Bajaj	three wheel motor
Bitter	a gift given at the formation of marriage
Chat	catha edulis, or celastrus adulis
Dereet	land holding accessed through inheritance
Gurdaa	traditional terms of trust
Hinee/kind	arm
Kebele	the lowest administration echelon
Qicha	the tradition of Guraghe people
Sebat-bet	seven houses or tribes
Wereda	sub-district
Wodere	traditional instrument made of rope used to measure holdings
Ye-ejoka	traditional assembly of Guraghe people
Zxir/zeng	traditional instrument made of stick used to measure holding

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CHAPTER I: INTRODUCTION

1.1.Background

In Africa since 1960s land reform movements has been continued to be a major area of development based policy frame work.[1] The effort of policy makers is; to ensure access to land and to move away from traditional or informal systems in order to encourage agricultural development, reduce poverty and foster sustainable development.[2] According to the guideline published by Food and Agriculture Organization (FAO); leasing, adverse possession or prescription, inheritance, illegal squatter and sharecropping; are mechanisms by which peoples access land.[3] On the other hand access to land can be provided systematically through land reform interventions by national governments, often as a result of policies to correct historic injustices and to distribute land more equitably. The land reform interventions include land redistribution programs which aim at providing the rural poor with access to land and promoting efficiency and investment in agriculture.[4]

Control over land forms a significant part of the identity and maintenance of rural society. In addition, secured and equitable access to land affects a broad range of fundamental human rights; thus it provides a valuable safety net as a source of shelter, food and income.[5] Particularly, in rural areas; the realization of the right to livelihood (including the right to water, the right to

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[1] Kojo Sebastian Amanor, *LAND GOVERNANCE IN THE 21st CENTURY: FRANMING THE DEBATE SERIES* (International Land Coalition 2012) 11; available <www.landcoalition.org>files>res> accessed November 12, 2018

[2] Amare Belete Taddese, 'Potential Impacts of Land Certification on Householder's Land Related Investment Intentions in Southern Ethiopia' (MSc. Thesis, NORWEGIAN University of Life Since 2013); 1 available at <https://www.nmbu.no>file>fid.PDF > last accessed November 12, 2018; see also Selam Afework Gorfu, 'The Impact of Land certification on Land conservation, Maintenance and Tree Planning' (2016) (MSc. Thesis, NORWEGIAN University of Life Since, 2016) 1; available at < https://brage.bibsys.nobitstream> accessed November 12, 2018

[3] FAO, 'Land Tenure and Rural Development' (Land Tenure Studies No.3, 2002) 16-17 see also FAO, 'Access to Rural Land and Land Administration after violent conflicts' (Land Tenure Studies No.8, 2005) 49; < www.fao.org>

[4] Ibid

[5] Elisabeth Wickeri and Anil Kalhan, 'Land Right Issues on International Human Rights Law' (2009) Institute for Human Right Business; available at https://www.ihrb.org>pdf>land.. > accessed November 12, 2018

health and right to work) is interconnected to the availability of land. For many, protection of land right is central to life.[6] According to Bruce, due to the reason that, access to land is related to kinship, identity and political power; land rights have deep socio-cultural significance in the societies of developing countries.[7]

Land issues are of crucial importance to economic and social development, poverty reduction, and governance. Again land is like freedom which is subjected to control to make it usable, is a source of conflict and it is also more vital for civilization.[8] Decisions concerning land, whose rights count and how those rights will be managed are not just technical choices, rather they are highly political. The choice of structure to manage land rights and resolve land disputes and resource conflicts will have consequences on different interests and groups of people.[9] According to international principles and interpretive documents, it is necessary to recognize land access right; for it is important to facilitate the realization of human rights.[10] Thus property rights are invoked in different international instruments. International instruments provide more general rights related to property; they did not expressly deals with land.[11] The African Union (AU) Declaration on issues of land provides that land laws should provide for equitable access to land and related resources among all land users including the youth and other landless and

[6] Montgomery Wray Witten, 'The Protection of Land Rights in Ethiopia' (2007) Vol.20 [1-2] Africa focus 154 available at <https://chilot.me>uploeads>2011/... > Last accessed November 12, 2018

[7] John W. Bruce, 'Introduction: Reforming Land Laws to Achieve Development Goals' in John W. Bruce and Others, *Land Law Reform: Achieving Development Policy Objective* (IBRD2006) 3

[8] Paul Bohannan, 'AFRICA'S LAND' (Michigan State University Press 1960) 439; available at <https://www.jstor.org/stable/reserp23737663> November 29, 2018

[9] Julian Quan, Su Fe Tan and Camilla Toulmin [Ed] 'Summary of Conclusion from the land in Africa conference held in London, November 8-9, 2004' in *Land in Africa* (IIED, NRI, RAS 2005)121; available at <https://www.jstor.org/stable/reserp16513.16> last accessed November 29, 2018

[10] Ibid

[11] See International covenant on Civil and Political Rights (ICCPR), the General Assembly Resolution No.2200A (XXI) 1966, Art.2 and Art.3 available at < https://treaties.un.org>publication>unts >; see also International covenant on Economic, Social and Cultural Rights (ICESCR), Dec. 16, 1966, 99, U.N.T.S.3, Art.2, Art.3 and Art.6; available at < http://www.unhchr.ch/html/menu3/b/a_cescr.html >; Universal Declaration of Human Rights (UDHR), United Nations General Assembly Dec. 10, 1948; Art.17; available at < http://www.un.org/Overview/rights.html#a25 >

vulnerable groups such as displaced persons.[12] The European Union (EU) Guideline also states that, land constitutes an asset and a source of wealth for families and individuals as well as for communities, with strong links to cultural and spiritual values.[13] And this guideline promotes access to land for all groups without discrimination.

Land policies determine, who has legal rights of access to certain resources, the conditions, and therefore how these productive assets are distributed among diverse stakeholders. In addition land policies express, implicitly or explicitly, the political choices made concerning the distribution of power between the state, its citizens, and local systems of authority.[14] The land policy of most African countries is based on State-ownership. Thus the notion of national or State land is used in African countries to refer the land which is holed by the State by monopoly.

When we come to Ethiopia Land is; a key resource for growth and development[15] and it is a resource which deemed to play a pivotal role for sustainable development.[16] It is inter-connected with extra factors like; identity, socio economic issues and politics, that leads to be treated as a constitutional and policy matter.[17] As Kassa noted in his study, land serves as the main source of income and livelihood, particularly in rural areas.[18] The 1995 Constitution of Federal Democratic Republic of Ethiopian (FDRE) provides policy framework in relation to land ownership and

[12] DECLARATION ON LAND ISSUES AND CHALENGES IN AFRICA (2010); Assembly/AU/Decl I (XIII) Rev.1

[13] EU Task Force on Land Tenure, 'Guidelines for support to land policy design and land policy reform process in developing countries' (2004) 1

[14] Ibid

[15] Samira Lindner, 'Ethiopia: Overview of corruption in land administration' (2014) Transparency International, 2 available at < https://www.transparency.org/.../ethiopia_overview_of_corruption_in_land_administration > accessed November 1, 2018

[16] Gebeyehu Belay Shibeshi, Helmut Fuchs and Reinfried Mansberger, 'Toolbox for Development of Cadastral and Registration Proclamation for Second Level Certification Program in Ethiopia' (2014) Vol.13 [1] IJSBAR 244, available at <http://gssrr.org/index.php?journal=journalofBasicANDApliedResearch > accessed November 30, 2018

[17] Daniel Weldegebreal Ambaye, 'Land Rights in Ethiopia: Ownership, equity, and liberty in land use rights' (2012) FIG Working Week study paper, 2012, 5 <https://www.fig.net/pub/fig2012/papers/.../TS02D_ambaye_5521.pdf > *last accessed* November 13, 2018

[18] Kassa Belay, 'Access to Rural Land in Eastern Ethiopia: Mismatch Between Policy and Reality' (2004) Vol.110 [2] Journal of Agriculture and Rural Development in the Tropics and Subtropics, 123; available at https://www.jarts.infoarticle>do.. > accessed November 12, 2018

administration. Accordingly Art.40 (3) of the Constitution provides that the right to ownership of rural land and urban land, as well as all natural resources is exclusively vested in the state and Peoples of Ethiopia. Incorporation of such provision in the constitution indicates that rural land has increasingly become a political affair. And it is also criticized for; it eliminates possibility of using flexible land policy and meaning full debates about utilization of land.[19] Yigremew also noted that; tenure insecurity, land degradation, holding diminution, and negative results on production and land utilization; are problems emanating from policy gap.[20] In the view of Semira, the policy problem is affecting legitimacy of the government for; it was highly politicized (i.e. land issues goes beyond economic affair).[21]

The FDRE Constitution envisages Ethiopian peasants, pastorals and semi-pastorals; with the right to obtain land without payment and the protection against eviction from their holding and use right with limitation.[22] It also provides an arrangement in relation to division of power, in which regional states have the power to enact laws in different matters. Land utilization and conservation is one of the matters. Rural land administration is delegated to the regional states.[23] Accordingly regional states also enacted their own land administration proclamations; which give rights to the rural landholders to inherit, bequeath and lease with restrictions on the size, modalities of access and period of land transfers.[24] But, so far, how much the basic Constitutional rights may legally be modified by such laws is quite untested in the courts. For

[19] Samuel Gebreselassie, 'Land, Land Policy and Smallholder Agriculture in Ethiopia: Options and Scenarios' (2006) feature agriculture discussion paper, 008 available at < https://www.future-agricultures.or. .> accessed November 12, 2018

[20] Yigremew Adal, 'Review of Landholding Systems and Policies in Ethiopia Under Different Regimes' Ethiopian Economic Policy Research Institute Working Paper No.5/2002) available at www.eeaecon.orgfiles>working... > Last accessed November 12, 2018

[21] Samira Lindner (n14) 3

[22] FDRE Constitution Proclamation no. 1/1995, Art 40(4) and (5)

[23] Ibid Art.51(5) and Art.52(2)(d)

[24] Zemen Haddis Gebeyehu, 'Towards Improved Transaction of Land Use Rights In Ethiopia' (2013) Annual World Bank Conference on Land and Poverty, The World Bank-Washington DC, April 8-10, 2013 available at <https://usaid.govfiles.doc... > last accessed November 12, 2018; see also Getnet Alemu (n37)

instance, the right of children to inherit rural land has been both specifically acknowledged in the federal land administration and use proclamation and subject to limitations in and state made proclamations.[25]

However due to variety of regional land laws and unclear directives from the federal level, it is difficult to come up with consistent land administration systems throughout the country especially for rural area.[26] According to Stein and Tewodros, Lack of knowledge about land laws and regulations, existence of unclear and inconsistence land governing proclamations and absence of fairness in the distribution of inheritance; are challenges, which affects the land tenure.[27] There are also factors like; population growth, land grabbing due to investment, corruption, and resettlements are the reasons for landlessness of general poor in which the largest amount of the population is youth.[28]

The rural landlessness is increasing due to different factors, such as; population growth, fragmentation, land use conversion, environmental degradation, and the impact of natural disasters. This affects tenure security and fundamental human rights.[29] Though, the above literatures are there indicating research has been conducted to explore land access under Ethiopian laws, it is difficult to get comprehensive studies in relation to land access requirement

[25] Montgomery Wray Witten (n6)

[26] SARDP, 'Land Registration and Certification: Experiences from the Amhara National Regional State in Ethiopia' (SARDP 2010) available at < www.sida.se/globalassets/global/...regions/.../ethiopia_amhara_final.pd...> accessed November 1, 2018

[27] Stein Holden and Tewodros Tefera, 'Land Registration in Ethiopia: Early Impacts on Women' (2008) UN-HABITAT, 21 available at < www.siteresources.worldbank.org>res.. > last accessed November 13, 2018

[28] Samira Lindner (n11); see also Elisabeth Wickeri and Anil Kalhan (n4); see Dustin miller and Eyob Tekalign Tolina, 'Land to the Tiller Redux: Unlocking Ethiopia's Land Potential' (2008) vol.13, Drake Journal of Agricultural Law, 347; available at < www.aglawjournal.wp.drake.edu>2016/ > see Frank F K Byamugisha, 'Securing land tenure and Access for Youth to Modernize African Agriculture' (2017) Land Policy in Africa Conference Paper; available at < https://www.uneca.orgpresentat... > accessed November 12, 2018; see Sosina Bezu and Stain T. Holden, 'Land Access and Youth Livelihood Opportunities in Southern Ethiopia Center' (2013) UMB/MPR, For Land Tenure Studies Working Paper 11/13, 8 available at < https://mpra.ub.uni-muenchen.de... > Last accessed November 12, 2018; see Tesfaye Teklu, 'Land Scarcity Tenure Change and Public Policy in the African Case of Ethiopia: Evidence on Efficiency and Unmet Demands for Land Right' (2006) 22 available at <www.homepages.wmich.edu>asefa> Last accessed November 13, 2018

[29] Elisabeth Wickeri and Anil Kalhan (n4)

(including the holding size) under Ethiopian rural land laws and the practical implication in Guraghe zone.

As a back ground of the study area, the Southern Nations, Nationalities and Peoples Region (SNNPR) of Ethiopia comprises 10% of the total area of the country (i.e. 112,223.19 sq. km.); which is located in southern part of the country bordered with Kenya in south, the Republic of South Sudan in south west, the State of Gambella Peoples in the north west and the State of Oromiya in the north and east. The Region is administratively divided in to 9 zones 72 *woredas*[30] and 5 special *woredas.* The capital city of the region is Hawassa.[31] According to the 1994 census report, the total population size is 10,377,028 of which 5,161,787 were males and 5,215,241 females.[32]

Gurage Zone is one of zones in SNNPR; bordered on southwest by Hadiya zone and Yem special Woreda, on west north by Oromia region, and on south East by Silt'e zone respectively. This zone is the home land of Guraghe people.[33]

Based on 2007 census conducted by the Central Statistical Agency of Ethiopia (CSA) the zone has total population of 1,279,646, of whom 622,078 are men and 657,568 women; with an area of 5,893 Km^2. Administratively there are thirteen woredas and two city administrations (i.e. Wolkite and Butajira).[34]

The Gurage speak a Semitic language composed of a cluster of dialects. Linguistically, they are divided into three groups: the Northern Gurage (i.e. Aymellel or Sodo), the Eastern Gurage

[30] *Woreda* is equivalent to a county just above Kebele

[31] Ethiopian Government Portal: SNNP Regional State – Ethiopia (2018); available at < www.ethiopia.gov.et/snnp-regional-state > last accessed January 17, 2019; see also Southern Nations, Nationalities and Peoples Region (SNNPR) (2019); available at < https://www.ethiovisit.com/southern-nations-nationalitis-and-people-(snnpr)/74/ > last accessed January 17, 2019

[32] Ibid

[33] Worku Nida, 'The Impact of Urban Migration on Village Life: the Guraghe Case' 1995 (MSc. Thesis Submitted to Addis Ababa University, June 1195) 24

[34] WIKIPEDIA, Guraghe zone Available at < https://www.en.m.wikipedia.org/wiki/Guraghe_zone > last edited on 16 January 2018. Last visited 11/02/2018

(Wollene, Meskan, etc.), and the Western Gurage, mainly the Sebat-bet, i.e., seven houses or tribes. The phrase Sebat-bet is a name given to a tribal confederation formed by the Seven, tribes of Gurage long before Menilik II's incorporation of the entire Gurage into the empire. These seven member tribes are: Cheha-Gumer, Muher, Abezghe, Enemorina Ener, Geto, and Endagagn.[35] The Gurage of Sebat-bet have been grouped on the basis of common culture and language.

The Western part of Gurage land which is inhabited by the Sebat-bet Gurage is divided according to climate into three different traditional altitude zones. This division corresponds with the three main agronomic zones known as woina-dega, dega, wurch and Kolla (tropical) is defined as an area falling between about 1,040 meters and 1,700 meters above sea level, woina-dega (subtropical) as 1,700-2,400 meters above sea level, and dega (temperate) as ranging between 2,400 meters and 3,400 meters above sea level.[36]

The people of Guraghe has its own way of living, tradition, Guraghe was known by its own customary leadership system (i.e. until the incorporation made by Menelik II in the 1880s) Similar to other southern part of Ethiopia. Those predominant traditional and customary administration[37] systems are; "*ya-joka"* and "*gordanna"*. "*ya-joka qicha"*[38] is mostly experienced in western part of Gurage land (Sebat-Bet Gurage). According to study the main role of the traditional system in the area is; adjudicating conflicts which arise within the people, formulating morally and socially acceptable norms as a legislature and administering the local community using traditional instruments of leadership mechanism. The tradition which

[35] Worku Nida (n33)
[36] Worku Nida (n33)
[37] '*Ethiopian Village Studies: Imdibir Haya Gasha/Girar, Gurage, SNNP*' (1995) Girar, Guraghe - Ethiopia wide [DOC] 5; available at < http://ethiopiawide.net/wp-content/uploads/W1Girar.docx > Last visit: 12/3/17
[38] A collection of traditional laws of the Sebat-bet Gurage, unless stated contextually, in this paper Gurage is understood as Sebate-bet Gurage and Gurage people as Sebat-bet Gurage people. See also Guraghe customary law *qicha* (as amended, 2002) published by GPSDO, section 52.1

efficiently operates in the area for long is applied equally to the rich and the poor, the titled and the untitled. But the system is criticized for it is ignorant of women and minority groups.[39]

The main focus area of this study is Sebat-bet Gurage, particularly in conducted in four *woredas* of Guraghe Zone (i.e. Enemorina Eener, Ezxa, Gumer and Cheha); see the shaded area in the map 1.1 below. The area is purposively selected based on information from *Guraghe* zone Administration. It is because in these area problems in relation to minimum holding size and other requirements provided by the rural land administration law are rampant.

1.2.Statement of the Problem

Land tenure in Ethiopia has a complex historical development. During Derg regime the only formal way of obtaining access to land was through membership in peasant association and land was subjected to periodic redistribution among households based on family size and land quality.[40] Current formal land laws of Ethiopia, entitle the right to free access of agricultural land for all Ethiopian. The FDRE Rural Land Administration and Use Proclamation no.456/2005; which reaffirms ownership of rural land to the State, provides rules governing acquisition of rural land, registration and security of the holding, duration of the holding right, rules in relation to dispute settlement and determination minimum size of holding.[41]

In this case the objective of the law is; to ensure social equity and access to land for all, to boost production by recognizing rights to females, to encourage farmers to conserve the resource, and

[39] BAHRU ZEWDE [Ed], *Ethiopia the Challenge of Democracy from Below* (Nordiska Afrika institute and Forum for Social Studies 2002) 18 < www.divaportal.org/smash/get/diva2:242112/FULLTEXT01.pdf > Last accessed 12/3/17

[40] Belay Zerga, 'Land Resource Use and Ownership in Ethiopia: Past, Present and Feature' (2016) Vol.2[1] International Journal of Scientific Research Engineering Technology, 17 available at < https://www.researchgate.net>publication > last accessed November 12, 2018

[41] Melkamu Belachew and Sewakena Aytenfsu, 'Facing the Challenge in Building Land Administration Capacity in Ethiopia' (2010) FIG Working Week Paper 2010, 3; available at < https://www.fig.netfig2010>paper> last accessed November 13, 2018

to establish good land administration system in general.[42] As Tesfaye stated, duration of land holding rights and transfer of rights are important to ensure tenure security.[43]

However, the law restricts access and transferability of rural land; by making residence in that particular region and other factors as a requirement to access land; a requirement in acquiring rural land free of charge.[44] In addition, conditions of engagement in agriculture, age, family membership, holding rural land for livelihood among others are provided to access rural land.[45] Furthermore, the Federal Rural Land Administration Proclamation provides that the size of rural land shall not be less than the minimum size holding.[46]

Accordingly, the SNNPR Rural Land Administration and Use Proclamation provide that, when the plot is meant for rain feed agriculture the size shall not be less than half hectare.[47] In case of transfer by inheritance, the law requires that the transferred land should not be less than half hectare.[48] In addition the law provides not only the rights; thus it provides duties as a condition to hold rural land. Accordingly there is a duty to use, protect and conserve the rural land.[49]

Though, the rural land laws provides such requirements, as per the researchers' work experience as a public prosecutor there are problems attributed to practical non-observance of the rural land laws. One of the problem is; there are scenario in which holders who reside in town and they did not actually reside in rural area, and they are not using the land rather they fence it and no one is going to use it. Thus actually their livelihood is not dependent on the land and they are not

[42] Rural land administration and proclamation No. 456/2055, the preamble
[43] Tesfaye Teklu, 'Rural Land Rights and Security in Cultivated High Land Ethiopia: Incremental Reform but Persistent Uncertainty' (2014) Vol.2 [1] International Journal of African Development, 101 available at <https://scholarworks.wmich.eduiss1> accessed November 12, 2018
[44] Getnet Alemu, 'Rural Land Policy, Rural Transformation and Recent Trends in Large Scale-Rural Land Acquisition in Ethiopia' (2012) European Report on Development, 9; available at <https://ec.europea.eu>sites>devc.. > accessed November 12, 2018
[45] FDRE Rural land administration and Use Proclamation, proc. No. 456/2005 Art.5
[46] Ibid Art.11 (1)
[47] SNNPR Rural Land administration and Use Proclamation, proc. No.110/2007 Art.11 (1) (a)
[48] Ibid Art.11 (2)
[49] FDRE Rural land administration and Use Proclamation, proc. No. 456/2005 Art.10

performing their duty. On the other hand, Courts are not observing weather the minimum holding size condition is respected or not. This is particularly happens when there is partition of property in divorce case and transfer of property by inheritance. In this regard the reader should not be ignorant of the fact that there are legal practitioners who strictly follow what the law says. There is also regular in-house partition of land by parents and the size of land could be less than the required amount.

Finally, there are scenarios in which those *kebele*[50] LACs participate in different acts which are mostly illegal. Informal land deal is one of those scenarios in which the LACs participate and it becomes the challenge in rural land administration system. Farmers use the legal advantage and transfer their holding (either partially or totally) through rent contract; in fact it is contract of sale. Through time (after the new holder improved the holding by using it for several years) and he takes title or certificate from the rural administrators, the transferor claims cancellation of contract in the court. This affect the tenure security in general and the constitutionally guaranteed individual right to access and use of land in particular. And it opens a room for mall administration of the land and corruption.

So due to this and other factors, the researcher is interested to search for and analyze comprehensively; the current legal frame work in relation to minimum land holding size requirements and their practical applicability.

1.3. Research Question

The thesis will try to address the following research questions;

- ✓ What are the minimum legal requirements to hold rural land in Ethiopia?
- ✓ What is the essence (pros and cons) of minimum holding rights?

[50] *Kebele* is the lowest administration echelon/level with about 800 hundred households

- ✓ How is the minimum rural land holding requirements are related to the general land policy line of the nation?
- ✓ What are the impacts of minimum rural land holding requirements on transfer of land rights in Ethiopia?
- ✓ What looks like the practice (are those holding requirements applicable in the study area?); and
- ✓ How the restriction of minimum rural land holding requirements should be viewed in the reform of the nation?

1.4. Objective of the Research

The general objective of the thesis is to comprehensively analyze minimum rural land holding requirements under Ethiopian land laws and to examine their impact. To this end, the thesis has forwarded specific objectives;

- ✓ To analyze and describe (comprehensively) the legal framework of rural land laws of Ethiopia;
- ✓ To examine the interconnection between minimum rural land holding requirements with the general land policy line of the nation;
- ✓ To examine the essence; its pros and cons of minimum holding rights;
- ✓ To find out the impacts of minimum rural land holding requirements on transfer of land rights in Ethiopia;
- ✓ To assess the practical applicability of legal requirements in the study area; and
- ✓ To show the gap and recommend a better approach which can bring the legal and institutional development for access to rural land, proper use of it and applicability of the law in the new reform of Ethiopia.

1.5. Research Methodology and Methods: Data Collection Tools

1.5.1. Methodology and Method

The core objective of this thesis was; to analyze and explain legal framework which are governing a requirements to hold rural land provided under rural land laws of Ethiopia and the practical impact. So it is believed that, the objective of the research can be achieved by using Socio-Legal methodology. This methodology is important to; reveal and explain practical application of rules, to understand material reality of the societies; to broaden legal discourse in terms of its theoretical and conceptual framework which guides the direction of the thesis and its specific research methodologies are able to generate empirical evidence to answer research questions.[51]

It is also important to understand social facts affecting applicability of the law. Issues related to land (access, transfer, management, and dispute settlement); is a complicated matter. As it is stated above, this research aimed at; analyzing the legal frame work regarding the holding right to rural land and to show its applicability, to magnify the existing legal problem and possible impact of its application. For this reason the research was conducted based on qualitative research method. The researcher preferred this method; because, it is feasible to come up with best finding and empirical outcome.

This research is based on qualitative research methodology. Because, qualitative method does not run software or analyze complex numbers; rather it deploys words via conversation and discussion thus understanding a matter in depth from real human feeling and motive perspective. In addition, due to the advantage to the researcher, so long as there is an opportunity of flexibility to interact and engage with research participants, and it is useful to point out their

[51] Mike McConville and Wing Hong Chui (Ed), *Research methods for Law* (Edinburgh university press 2007)5

opinions and perspectives.[52] The researcher preferred a case study approach because; it is important to incorporate different data collecting tools[53] and it rely on the sort of in-depth knowledge of a particular area which can be regularly acquired in professional practice.[54] It is also relevant to come up with intended outcome.

1.5.2. Data Source and Technique of Collection

In preparation for field research, the author conducted a desk review on the land tenure system of Ethiopia as a focus point, and review of key documents (appropriate and relevant primary and secondary sources) prepared by authoritative bodies, researchers and institutions. The collected and reviewed sources were analyzed under the topic when they were relevant. Under primary source the researcher reviewed federal and regional legislation governing rural land, made field observation and has made interview of key informants; particularly legal experts, peasant elders, youth and land administration officers.

First, the researcher has made review and analysis of federal and regional rural land legislation and their subsequent regulations. In addition the writer observed; land holding certificates of peasant and primary document of the so called '*ye-bahir mezgeb'* of the *woreda* land administration office register; so as to understand the practical application and impact of the law in relation to the research objective. There was observation and analysis of some relevant cases which were accessed from court registries. Furthermore the researcher had made a field observation selected households in the study area.

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[52] Kristina Simion, *Qualitative and Quantitative Approaches to Rule of Law Research* (INPRL 2016)16

[53] BRUCE L. BERG, *Qualitative Research Methods for Social Science* (2001) California State University, Long Beach, 4th ed. 225

[54] Jo Moriarty, 'Qualitative Methods Overview: Improving the Evidence Base for Adult Social Care Research' (2011) School for Social Care Research 16; available at <https://lx.iriss.org.ukcontent>qualities... > accessed November 1, 2018

Secondly, the researcher prepared semi-structured questions for interview of stake holders; thus government officials of land administration, formal Court judges and lawyers in Zonal and *Woreda* level of Guraghe Zone were participants of interview. The reason for preference of semi-structured questions was, because it opens opportunity to follow a flexible approach for the researcher in relation to different respondents while the covering the same area of data collection. The preparation of semi-structured questions for interview was carefully designed to provide adequate coverage for purpose of the research. This was made to extract facts in relation to the practical applicability of the law and whenever there was vagueness or lack of clarity as to the legislations.

In addition *kebbele* land administrators, peasants, youth and elders in the rural community of the four selected localities or *Woredas* (i.e. in *Enemorina Ener, Gumer, Cheha and Eza*), and Kebele level were subjects of interview. A total of forty six (46) interviews were carried out in the study area. For recording the interviews, the researcher used mainly tape-recording and note-taking techniques in combination, where applicable. The tape-recording was used to secure an accurate account of the conversations and to avoid the risk of losing data where it was not possible to write down the content of the interview. In order to facilitate data analysis, the data obtained through interviews was transcribed into written text. Where it was possible, the task of transcription was started as soon as each interview session was completed.

Purposive sampling technique was employed to choose the three *woredas* (i.e. areas or localities) for assessment based on informal assessment of the land holding requirements provided by the law to understand issues related to land (access, transfer and management). This kind of sampling technique was also used to collect data; in selecting key informants for interview and field observation. It was for the reason that, it is believed that such technique is best way to

extract data about the issue and to come up with best finding in relation to specific purpose in mind. The participants which are purposively selected are based on their job responsibilities, position and their involvement in research objective. In this regard the researcher personal judgment was made on the ground that they could provide necessary and relevant information for the purpose of the research.

When we come to secondary source; legal literatures, text books, conference reports, articles and journals were analyzed and reviewed in-depth to conceptualize the minimum size holding and other requirements provided by the law.

1.5.3. Location of the Study Area

The Guraghe land is located in the south and south-east of Addis Ababa, between 37 30' and 38 SO'E, and 7 46' and 8 45'N. Since the 1994 proclamation of regionalization, Gurage land is found in the Southern Ethiopian People's Administrative Region, particularly the Gurage Zone (see map 1).

The main focus area of this study is Sebat-bet Gurage, particularly in conducted in four *woredas* of Guraghe Zone (i.e. Enemorina Eener, Ezxa, Gumer and Cheha); see the shaded area in the map below.

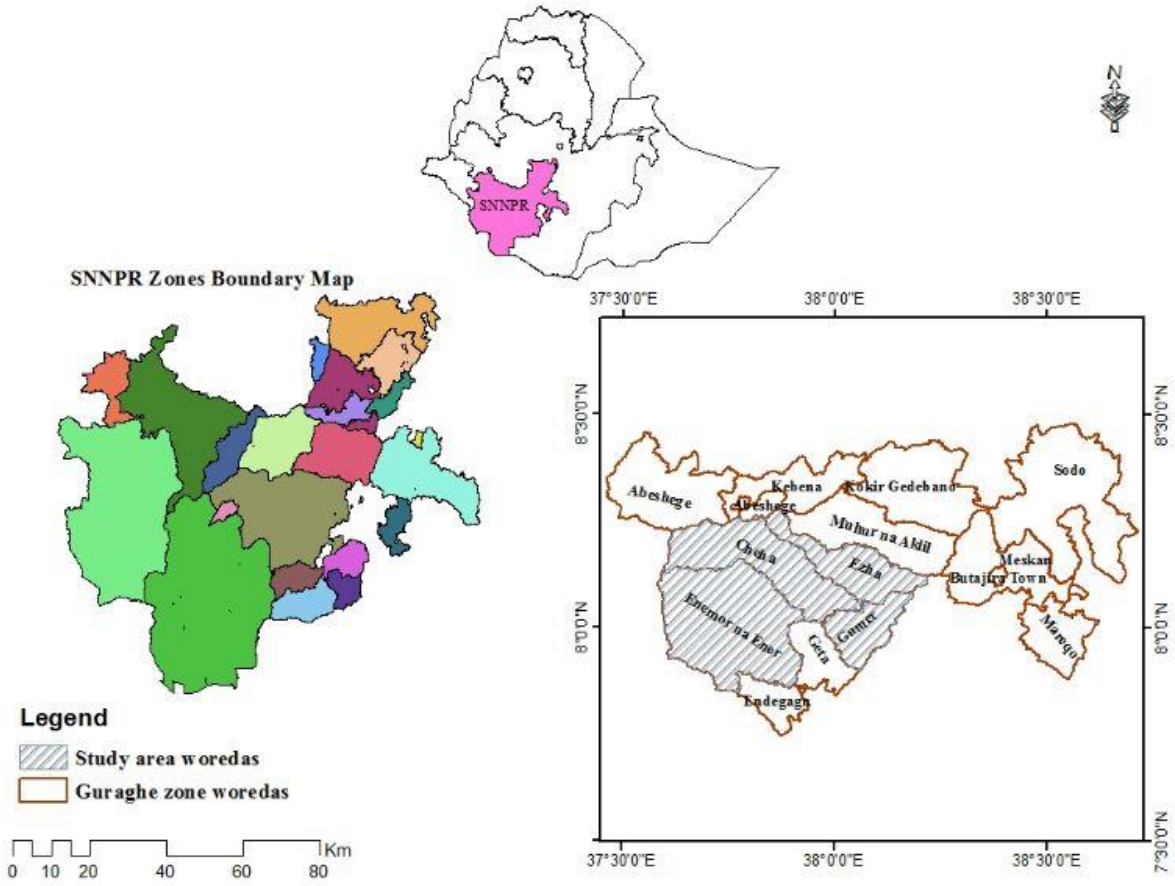

Figure 1 map of the study area: Source GIS 1999; CSA

1.6. Significance of the Study

Under this study the tenure system of Ethiopia were explored in depth and the system of other countries were also highlighted so as to conceptualize minimum land holding size requirements. So under the outcome of this research hopped that readers can have a brief hint regarding the research topic. The study can be used as an input for the government and policy makers so that it is important to take measures to promote and develop proper land access, use and management system. In addition the author suggested in the concluding and recommending parts of the research that can improve policy frameworks and mitigate critics which can be observed under the current reform in which the county is going. Thus, the researcher explored experiences and

accepted models of good land governance followed by policy makers. The research also serves as a base line for further study more in the area.

1.7. Scope and Limitation of the Research

The study was carried out in *Guraghe Zone* of SNNPR; and it reflects the practical cases in relation to minimum holding size requirements. The main field study was conducted in four *Woredas* and *Kebeles* from each *Woreda.* The study is a piece of effort to search for realities regarding rural land holding requirements and how far those rules are applicable practically. The result is based on the analyzing perceptions and responses of the land administration officials, legal practitioners, farmers, rural youth and observation of studies, court cases and researcher's observation of sights. With a brief discussion of historical background the study focused on the current situations.

Limitation of the study;- It is important to note that the country is diversified in legal frameworks regarding rural land, agro-ecologic, socio-economic, cultural and institutional environment and due to location specific nature of the study; its results could not be generalized to other areas throughout the country.

1.8. Organization of The Thesis

This thesis is organized as follows: Chapter two is devoted to literature review pertinent to the study. It reviews and analyzes definitional concepts of (land access and tenure; issues and approaches related to land fragmentation and land consolidation); and legal frame works governing rural land in Ethiopia. Chapter three of the thesis focuses on land holding requirements under Ethiopian law, the policy reason and their impacts. It analyses the detail provisions of the federal and regional rural land laws in relation to the requirements provided. In addition the experience of other jurisdiction is highlighted under separate section.

Chapter four presents detail discussion of the experience from Guraghe zone; thus it is all about detailed discussion of the data collected so as to evaluate the practical applicability of the law. Accordingly, how the rural youths, miners, women, private investors and governmental or non-governmental organizations access rural land with reference to minimum holding size requirement. In addition, issues of transfer of rural land holding in relation to minimum size holding requirements and the impacts of the requirement on transfer of land rights. There is also evaluation of the practice and compatibility with the requirement provided under the law. The thesis shows impacts of tradition on applicability of the law and analyzes relevant court cases. It also discussed about the challenges and opportunities in relation to land access and holding requirements in the study area. Furthermore, the chapter highlights issues of Ethiopian land policy and recommendable options which can be observed under the current reform of the country.

Finally, chapter five takes part to deal with conclusion and recommendation forwarded by the researcher.

CHAPTER II: LEGAL AND THEORETICAL FRAMEWORK

2.1. Land Access, Tenure and the Form

2.1.1. Land access and Holding

The term "access" has not been adequately theorized, though it is used frequently by property analysts and other social theorists. However, it is used in literatures to refer property right and other means of benefiting from resource. Some people and institutions control resource access while others must maintain their access though those who have control.[55] Access can be of legal or right based (sanctioned by law, custom or convention) and illegal (i.e. when the benefits are gained through illegal mechanism).

Land access is defined by the availability of land as a resource with the required security of ownership, desirable physical and economic attributes, reliable credit and property information and the level of transparency and fairness of transactions.[56] Land holding is the land being utilized in full or in part for agricultural purpose which is located in a single parish (administrative area). The holding may consists of one parcel or may be in several parcels.[57] A land holding is a term used to describe an area of land, usually a working farm. Depending on the scale of the farm, it may be referred to as a small holding or large holding.[58]

2.1.2. Patterns of Land Holding

Historically, the most experienced way of access to land has been through state managed coercive land reform. Nowadays this kind of land access is not the dominant way or patterns;

[55] Jesse C. Ribot and Nancy Lee Peluso, 'A Theory of Access' (Rural Sociology, 2003) 68 [2]153; available at https://mycources.aalto.fi>content>AR2%20-%20Ribot%202013%20A-Teory-of-Access > accessed January 2, 2019

[56] Dr. Rexford A. Ahene, 'Measures to Improve Access to Land Resource and Related Benefits in Uganda' (published online 2019) < www.siteresources.worldbank.org>Ahenedoc > accessed March 12, 2019

[57] FAO, 'Concepts and Definitions' < www.fao.org>ess>other_materials>jam_eng_concepts > accessed March 17, 2019

[58] Rebeca Leonard and Judy Logbottom, 'Land Tenure Lexicon: A Glossary of Terms from English and French Speaking West Africa' (IIED, 2000) 31

thus, most of the land in use has been accessed through private transfers (like, intra-family transfers such as; inheritances, *inter-vivo* transfers, and allocation of plots to specific family members), community membership and informal land market, direct appropriation, and market transactions.[59] There are also state-managed programs of access to land that do not rely on coercion (like, colonization schemes, collectivization and devolution). However, large scale redistributive land reforms requiring state expropriation are generally no longer compatible with current political circumstances.[60]

2.1.3. Land Tenure and Forms

The term tenure is derived from a Latin term for 'holding' or 'possessing' land.[61] Therefore, land tenure is a social construct which defines the relationships between individuals, groups of individuals and the state with respect to land (i.e. the manner, in which land rights are held, used and transacted).[62] These relationships can be analyzed in terms of sets of rights, responsibilities and restrictions with regards to access, control, management, and transfer of land. Land tenure plays a significant role in determining how a society functions.[63] The choice of structure to manage land rights and resolve land disputes and resource conflicts will have consequences on different interests and groups of people.[64]

When we come to forms; we have private tenure which grants ownership of land and the land rights associated with it to individuals or legal persons such as corporations and partners. Such

[59] Alain de Janvry and Elisabeth Sadoulet, 'Access to Land and Land Policy Reforms' (2001) UNU/WIDER Policy Brief No.3,1;available at < https://www.staff.ncl.ac.uk>AEF806 > February 9, 2019

[60] Julia Quan, 'Land Access in 20th Century: Issues, Trends, Linkages and Policy Options' (2006) Natural Resource Institute University of Greenwich, LSP Working Paper 24, 2006,5

[61] Rebeca Leonard and Judy Logbottom (n58)

[62] Joseph Schechla, 'Security of Tenure Through The Habitat Agenda, 1976-2016' (2017)1; available at < www.hlrn.org>img>js_presentation_full > accessed March 18, 2019

[63] Achamyeleh Gashu Adam, 'Peri-urban Land Tenure in Ethiopia' (DPhil thesis, KTH, 2014) 9

[64] Lorenzo Cotula, 'Other Land Governance Issues' in Land Rights and Investment Treaties: Exposing the Interface' (International Institute for Environment and Development 2015) 37 available at <https://www.jstor.org/stable/reserp16526.11> accessed November 29, 2018; see also Paul Bohannan (n8)

kind of tenure may exist with indigenous tenure systems in countries such as; Island and Lesotho.[65] There is public or State tenure where the state exercises ownership and governance of land. Land allocation, use and transfer of land are determined by state.[66] In some countries like; Cuba, Ethiopia and Vietnam all land is vested in the state and allocated as per officially determined priorities.[67]

We have also communal tenure by which land rights are held by multiple users in communal ownership. Land allocation, use and transfer to the individuals are determined by leaders of the community (i.e. a group sharing the same cultural identity).[68] Such tenure allows individuals to hold rights and obligations jointly with all other users. Open access is also a tenure type in which no one holds land rights. In this system, there is no defined group of users/owners and so the benefit stream is available to anyone.[69]

There is also non-formal tenure, which allows holdings in the form of squatting, unauthorized subdivisions and developments on legally owned or possessed land, and various forms of unofficial land transaction and rental arrangements with varying degrees of legality or illegality.[70] Most often, the non-formal tenure categories emanate from the inability and inefficiency of formal tenure categories to accommodate the needs of the urban poor.[71]

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[65] Geoffrey Payne and Alain Durand, 'Holding on: Security of Tenure-Types, Policies, Practice and Challenges' (2012) a research paper prepared for an expert group meeting on security of tenure convened by a special rapporteur on 22-23 October, 2012, 12; see also Geoffrey Payne, 'Urban Land Tenure Options: Tittles or Rights' (2000) paper presented for World Bank Urban Forum Westfield Marriott, Virginia USA, 3-5 April 2000, 2; see also Achamyeleh Gashu Adam (n63)

[66] Achamyeleh Gashu Adam (n63)

[67] Geoffrey Payne and Alain Durand (n65)

[68] Harold Demstez, 'Toward a Theory of Property Right' (1967) The American Economic Review, Vol.57 [2]347 < http://links.jstor.org/sici?sici=0013-0427%28193711%292%3A4%3A16%3C386%3ATNOTF%3E2.0.CO%3B2-B > accessed March 17, 2019; see also Geoffrey Payne and Alain Durand (n57) and Achamyeleh Gashu Adam (n60)

[69] Achamyeleh Gashu Adam (n63)

[70] UN-HABITAT, *The State of The World's Cities 2004/2005: Globalization and Urban Culture* (Un-habitat, 2004)103 ; see also Geoffrey Payne and Alain Durand (n65) and see also Geoffrey Payne, 'Urban Land Tenure Options: Tittles or Rights' (2000) paper presented for World Bank Urban Forum Westfield Marriott, Virginia USA, 3-5 April 2000, 2 and see also Achamyeleh Gashu Adam (n63)

[71] Achamyeleh Gashu Adam (n63)

Currently, non-formal tenure remains the most common urban tenure category in many countries and accommodates the majority of lower income households, often expanding more rapidly than any other tenure categories.[72]

2.2.Farm Size, Productivity and Fragmentation

The term 'farm' is used, in common parlance, to refer to a unit engaged in agricultural production.[73] Farm size refers to average land operated by the family for crop production in hectares.[74] In developing countries, most of farms are family farm in small plots of land and they face low transaction costs in labour, engage more workers per hectare, who being family, are motivated to work. Farm size is usually considered the physical size of land held in operation. The land holding or parcel size and its influence on land fragmentation and/or agricultural productivity are an overall problem around the world. Dominant problem associated with land fragmentation is the small size, irregular shape, and dispersion of parcels.[75]

Average farm size has decreased in most low- and middle-income countries and for the world as a whole over the period 1960 to 2000.[76] Recently there is an average farm size decrease in African countries like; Ethiopia, Senegal, Zambia and Zimbabwe, but increased slightly in Tanzania. On the other hand in some land abundant African countries, there has been an increase in average farm size.[77] About two-thirds of the developing world's 3 billion rural people live in

[72] Achamyeleh Gashu Adam (n63)
[73] Philip Lund, 'The Measurement of Farm Size and The Meaning of part-time farming: The AARES Countries' (2007) AARES 2007 Conference, Queenstown New Zealand; 13-16 February 2007, 2
[74] Amy Lucas, 'A Data Portrait of Smallholder Farmers: An Introduction to A Dataset on Small-scale Agriculture' (2015) Food and Agricultural Organization of the United Nations,1
[75] Gashaw Tenna Alemu, Zewdu Berhanie Ayele and Assefa Abelineh Behanu, 'Effects of Agricultural Productivity in North Western Ethiopia' (2017) Hindawi, Advances in Agreculture,1
[76] Sarah K. Lowder, Jakob Skoet and Saumya Singh, 'What Do We Really Know About the Number and Distribution of Farms and Family Farm in the World?: Background Paper for the State of Food and Agriculture 2014' (2014) ESA Working Paper No. 14-02, April 2014,Rome, FAO, 11
[77] Sarah K. Lowder, Raffaele Bertini, Panagiotis Karfakis and Andre Croppenstedt, 'Transformation in the Farm Size and Distribution of Farmland Operated by Household and Other Farms in the Selected Countries of Sub-Saharan Africa' (2016) Invited Paper Presented at the 5th International Conference of African Association of Agricultural Economists, September 23-26, 2016, Addis Ababa Ethiopia,4

about 475 million small farm households, working on land plots smaller than 2 hectares.[78] Many are poor and food insecure and have limited access to markets and services. Their choices are constrained, but they farm their land and produce food for a substantial proportion of the world's population.

In China, nearly 98 percent of farmers cultivate farms smaller than 2 hectares – the country alone accounts for almost half the world's small farms. In India about 80 percent of farmers are small. In Ethiopia and Egypt, farms smaller than 2 hectares constitute nearly 90 percent of the total number of farms. In Mexico, 50 percent of the farmers are small; in Brazil smallholders make up for 20 percent of the total number of farmers[79].

2.3.Land Fragmentation

2.3.1. Land Fragmentation and Forms

Land Fragmentation is defined as the spatial dispersion of a single farm holding into several distinct parcels over a wide area usually separated by other farms, as well as a high density of land users on a small farm.[80] There are two dimensions of land fragmentation; the spatial (physical) aspect, and the tenure (legal) aspect. Based on these two dimensions, four forms of land fragmentation are; fragmentation of land ownership, land use, ownership-use and internal.[81] Land ownership fragmentation characterizes the situation where several persons own one parcel of land; while land use fragmentation, refers to a high density of land users on a small sized farm. These land users may be tenants or land owners.

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[78] George Rpsomanikis The Economic Lives of Smallholder Farmers: an Analysis Based on Household Data From Nine Countries' (2015) Food and Agriculture Organization of United Nation,2015, Rome, 1

[79] Ibid

[80] K. O. Asiama, R. M. Bennett and J. A. Zevenbergen, 'Land Consolidation for Sub-Sahara Africa's Customary Land-The Need for Responsible Approaches' (2017) American Journal of Rural Development, 2017, Vol.5[2],39 available online at < http://pubs.sciepub.com/ajrd/5/2/2 > accessed May 1, 2019

[81] K. O. Asiama, R. M. Bennett and J. A. Zevenbergen (n80); see also Reuben M. J. Kadigi and Others (n85)

Ownership-use fragmentation refers to a high proportion of land users being tenants therefore the land owner-land use relationship is broken. Internal fragmentation deals with the shape and size of the parcels as well as the distance between the parcels. A cursory look over the four forms of fragmentation shows the first three dealing with the legal aspect, and the fourth looking at the physical aspect.[82]

2.3.2. Causes of Land Fragmentation

The customary land tenure system is identified as one of the major causes of land fragmentation Customary tenure describes the form of land tenure that is based on the customs and traditions of a group of people, reflecting the socio-cultural, and spiritual connection among generations; present, past and future.[83] This fuels the belief that the current generation is merely a caretaker, steward, or protector of the land. In addition to customary tenure uninterrupted settlement, conquest and occupation, or as a gift or purchase; inheritance is currently the most common means of land acquisition.

Shifting cultivation, as the predominant agricultural system of customary lands, is another key cause of land fragmentation in the area were customary tenure is existent. This system however moves to a more intensive system as the population density grows. Shifting cultivation, which thrives on land fragmentation, involves farming a parcel of land for a period and then leaving it to fallow whilst another area is farmed. Shifting cultivation allows for the tilling of the farms one after the other gradually causing land fragmentation.[84]

2.3.3. Debate on its Impacts

[82] K. O. Asiama, R. M. Bennett and J. A. Zevenbergen (n80)
[83] Ibid
[84] Scott Simons, 'Land Fragmentation in Developing Countries: The Optimal Choice and Policy Implications' 703

There are contradictory considerations regarding whether land fragmentation is a problem or not. Firstly, there is a viewpoint that sees land fragmentation as the source of ineffective agriculture.[85] This viewpoint considers land fragmentation as a major threat to efficient production system due to the fact that continuous subdivision of farms would lead to small sized land holdings that may be hard to economically operates. According to this viewpoint, land fragmentation is said to harm productivity in a number of ways like fragmented land holdings can increase transport costs.[86] Land fragmentation can have a severe negative impact on the productivity and costs of farming, especially in developed countries where agriculture is highly mechanized.[87]

The counter viewpoint sees land fragmentation as a positive situation under which farmers can cultivate many environmental zones, minimize production risk and optimize the schedule for cropping activities.[88] The fragmented parcel is not a problem at this point as population numbers are low, the farmer uses small equipment and it deals with the critical seasonal labour bottlenecks. Fragmentation can also reduce risk. In wet years, when lowland is waterlogged, higher patches can yield at their best; in drought years, low-lying patches may get enough water while upland yields nothing. [89]

2.4.Land Consolidation

2.4.1. Land Consolidation and its Importance

[85] Reuben M. J. Kadigi and Others, 'Land Fragmentation, Agricultural Productivity and Implication for Agricultural investment in the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) Regions Tanzania, (2017) Journal of Development and Agricultural Economy Vol.9 [2]26 available at < http://www.acadamicjournals.org/JDAE >
[86] Scott Simons (n84)
[87] Marije Lauwsma, Mcaro Van Beek and Bent Hoeve, 'A New Approach: Participatory Land Consolidation' (2014) FIG 2014 Engaging the Challenges – Enhancing the Relevance, Kuala Lumpur, Malaysia 16-21 June 2014, 2
[88] Reuben M. J. Kadigi and Others (n85)
[89] Robert Eastwood, Michael Lipton and Andrew Newell, 'Farm Size' in *Hand Book of Agricultural Economics, Volume 4*, (Burlington: Academic Press, 2010)3323

Land consolidation is reallocation of parcels to remove effects of fragmentation.[90] The first consolidation initiatives of Denmark in the 1750s were part of a profound social reform to free people from obligations to noble landlords by establishing privately-owned family farms.[91] It encompasses activities of village renewal, providing adequate land for new houses and workplaces to improve living and working conditions.

Consolidation of fragmented holdings results in improved agricultural productivity.[92] In addition, though, absent redistribution, land consolidation benefits large farmers most absolutely it probably raises income proportionately more for small farmers. First, fragments per hectare vary inversely with farm size. Second, on small farms even a given number of fragments per farm can mean tiny plots. However it could be argued that argues that, since consolidation means greater gain for small farmers, it may achieve the same goals as land administration reform but less contentiously.[93]

Consolidation may have an ecological disadvantage. Though, raising input and net output most for small family farms, raises risk (to which they are especially vulnerable) and cuts flexibility (one of their major advantages).[94]

2.4.2. Approaches to Land Consolidation

The most effective consolidation instrument of rural development is comprehensive land consolidation but at times other approaches such as simplified consolidation, voluntary consolidation, and individual consolidation initiatives can bring benefits.[95]

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[90] Arvo Vitikainen, 'An Overview of Land Consolidation in Europe' (2004) Nordic Journal of Real Estate Research, Vol.1,25

[91] FAO, 'FAO LAND TENURE STUDIES #6: The Design of Land Consolidation Pilot Projects in Central and Eastern Europe' FOOD AND AGRICULTURE ORGANIZATION OF UNITED NATIONS, ROME, 2003,19

[92] Zvi Lerman and Dragos Climpoies, 'Land Consolidation as A Factor for Successful Development of Agriculture in Moldova' (2006) Discussion Paper No. 10.05 presented at 96th EAAE Seminar, Causes And Impacts of Agricultural Structures , 10-11 January 2006, 4; and see also FAO (n91)

[93] Robert Eastwood, Michael Lipton and Andrew Newell (n89); see also Zvi Lerman and Dragos Climpoies (n92)

[94] Ibid

Comprehensive land consolidation; it is an approach which include the re-allocation of parcels together with a broad range of other measures, to promote rural development.[96] Examples of such activities include village renewal, support to community based agro-processing and construction of rural infrastructure. Simplified land consolidation; which optimizes conditions in the agricultural sector through the re-allocation or exchange of parcels, and the provision of additional lands from land banks.[97]

Voluntary consolidation; when all the land owner of a village or concerned area agrees to carry it out.[98] As consolidation is entirely voluntary, all participants must agree fully with the proposed project. As a result, voluntary projects tend to be small, and voluntary consolidation tends to be best suited to address small and localized problems.[99] Compulsory consolidation is an approach imposed by authorities where there is no member of the village or concerned area is willing to start it.[100] This approach may result in un-cooperation, resentment and resistance of peasants.

There is also hybrid approach, which is a combination of the two (i.e. voluntary and compulsory) systems. Therefore, a voluntary partial consolidation means that when some landowners agree with the implementation of the project, then others might follow. Furthermore, the landowners in favor of land consolidation usually hold a substantial amount of land, in terms of area or economic value.[101] Individual consolidation; where consolidation of holdings can take place on an informal and sporadic basis. The state is not directly involved and so these initiatives do not

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[95] FAO (n91)
[96] Ibid
[97] FAO (n91)
[98] Jiang-Ming Zhou, 'How to Carry Out Land Consolidation An International Comparison' (1999) EUI Working Paper ECO, No. 99/1, 5
[99] Riccardo Beltramo, Andrea Rostagno and Alessandro Bonadonna, 'Land Consolidation Association and the Management of Territories in Harsh Italian Environments: A Review' (2018) resources 2018, 7[19], 4
[100] Jiang-Ming Zhou (n98)
[101] Riccardo Beltramo, Andrea Rostagno and Alessandro Bonadonna (n99)

include the provision of public facilities.[102] However, the state can play a significant role in encouraging consolidations that improve agriculture by promoting instruments such as joint land use agreements, leasing and retirement schemes.

Countries like, Ghana and Rwanda (which undertook a new form of land use consolidation) used consolidation via restrictions on sales or rentals limits ability of farmers to adjust optimally the fragmentation of their holdings over time.[103]

2.5.Land Consolidation in Ethiopia; the Approach Adopted

The Federal Rural Land Administration and Use proclamation recognizes land consolidation to protect land fragmentation. The proclamation provides that "in order to consolidate and make small farm plots convenient for development, farmers are encouraged to voluntarily exchange farm lands".[104] In addition the same proclamation provides procedures as to how the consolidation can implemented. Accordingly, the information about the farm plots which farmers intend to exchange is required to be disseminated through kebele administration to let other farmers know about it.[105] Furthermore the proclamation the law recognizes the community to request and participate in a settlement and villagization programs. When the community requires it should be accomplished considering land consolidation.[106]

As the law encourages and recognizes farmers to exchange their farm land; voluntary land consolidations approach in adopted Ethiopia.

2.6.Legal and Institutional Frameworks Governing Rural land in Ethiopia

The legal framework for rural land administration can be inferred from the 1995 Constitution and Proclamation No. 456/2005. Regional states proclamations, regulations, and directives are part of

[102] FAO (n91)
[103] Robert Eastwood (n93)
[104] FDRE Rural land administration and Use Proclamation, proc. No. 456/2005 Art.11 (4)
[105] FDRE Rural land administration and Use Proclamation, proc. No. 456/2005 Art.11 (5)
[106] FDRE Rural land administration and Use Proclamation, proc. No. 456/2005 Art.11 (6)

the legal framework that provides operational details.[107] According to Article 52 (2) (d) of the said constitution empowers regional governments to administer land and other natural resources in accordance with Federal laws thus; there is no independent body to oversee land matters.[108] Based on this Constitutional backdrop, rural land laws were enacted in different regions such as Tigray Region Proclamation No.136/2007, Amhara Region Proclamation No.133/2006, Oromia Region Proclamation No.130/2007, and SNNP Region Proclamation No.110/2007, Afar Region Proclamation No.49/2009, Benishangul-Gumuz Proclamation No.85/2010, Gambela Region Proclamation No.185/2011, and Somali Regional State Proclamation No.128/2013.[109]

Institutionally, at the Federal level, Ministry of Agriculture (MoA) is mandated to oversee the rural land sector. The Ethiopian Mapping Agency (EMA) is responsible for countrywide topographic mapping and for the establishment and maintenance of geodetic control points. Information Network Security Agency (INSA) is another Federal institution mandated to capture, process, store, and disseminate geo-spatial data in the country.[110] Within the MoA, the Land Administration and Use Directorate (LAUD) is one of the directorates found under the State Minister for Natural Resources Development, Conservation and Utilization and it is responsible to; oversee the rural land administration, to oversee land use and land tenure of rural lands outside large scale agricultural investment lands, and Specifically, to follow-up implementation of the Rural Land Administration and Use Proclamation 456/200, enacted by the

[107] Getnet Alemu, 'Rural Land Policies, Legal Frameworks and Policy Implication on Rural transformation and Sustainable development' (2011) Addis Ababa University 19, May 2011 ERD Consultation ppt. available at < https://ec.europa.eu>sites>devco>files > last accessed December 20, 2018; see also World Bank, 'Option for Strengthening Land Administration: Federal Democratic Republic of Ethiopia' (2011) world bank report no.61631-ET, pp23-25

[108] Dustin miller and Eyob Tekalign Tolina (n28); see Daniel Weldegebreal Ambaye (n9); see also Elias N. Stebek, Muradu Abdo and Hailu Burayu (n79)

[109] Muradu Abdo Srur, 'State Policy and Law in Relation to Land Alienation in Ethiopia' (DPhil thesis, University of Warwick 2014) 141; available at < http://wrap.warwick.ac.uk/74132/1/WRAP_THESIS_SPUR_2014.pdf > last accessed November 24, 2018;

[110] Zerfu Hilu, 'Land Governance Assessment Framework Implementation in Ethiopia' (2016) final report [23] 34-38, available at < www.siteresource.worldbank.org>research > last accessed November 24, 2018

Federal Government, by providing professional support to the regional rural land administration institutions and coordinating competent authorities working on land related issues.[111]

The Six regional states of Amhara, Oromiya, SNNP and Tigray and recently Gambella and Benishangul-Gumuz established land administration offices to implement the Federal and regional land laws. These offices have undergone several changes. Some of them started as a section of the regional agricultural bureaus and later changed to independent authorities under these bureaus. Those in the Amhara and Oromiya regions have been transformed into bureaus separate from agriculture. Oromiya has gone farthest in reform by combining the administration of both urban and rural lands in the same bureau, the Oromiya Bureau of Environment and Lands. The other regions have yet to establish land administration offices separate from those of agriculture.[112]

In addition, although the regional implementing institutions for rural land administration are varying among regional states, in naming and organizational settings, there are offices at regional, zonal and Woreda administrative levels in all the nine regional states. Some regions, such as Amhara SNNP and Oromiya, extended their office to the Kebele level, which is the lowest administrative structure. There are local level institutions established to implement land administration systems, which are called Land Administration and Use Committees (LAUC).[113]

[111] World Bank, 'Option for Strengthening Land Administration: Federal Democratic Republic of Ethiopia' (2012) world bank report no.61631-ET,30

[112] Tigistu Gebremeskel Abza, 'Experience and Future Direction in Ethiopian Rural Land Administration' (2011) Paper Presented at Annual World Bank Conference on Land and Poverty, 6

[113] Zerfu Hilu (n110)

CHAPTER III: LAND HOLDING REQUIREMENTS IN ETHIOPIA

3.1. Acquisition and Transfer of Rural Land: General Overview

One of basic and important features of the rural land law of Ethiopia, it recognizes access to rural land free of charge for an indefinite period to peasants, pastoralists and semi-pastoralists who are or wish to be engaged in agriculture[114]; and to investors through lease or rent for a specified period of time.[115] According to the law, rural land can be acquired either by distribution (distribution of government land, communal land, other un-occupied land and land with no inheritor), redistribution, settlement programs, donation or inheritance.[116]

The other important thing in relation to transfer of rural land provided by Ethiopian rural land law; any holder (i.e. of peasant farmer, semi-pastoralist and pastoralist) can lease to other farmers or investors land from their holding of a size which is sufficient for the intended development for a specified period and the holder has the right to transfer his or her rural land use right to family member by donation or inheritance.[117]

In the case of transfer by donation and inheritance, being a rural resident and engagement or wishing to engage in agriculture is a condition of eligibility, while transfer through rent or lease can be for rural and urban residents who are or wish to be engaged in agriculture with size and time restrictions.[118] Accordingly the focus point of this chapter is; detail analysis of holding requirements/conditions recognized under the law, their policy reasons and impacts.

3.1.1. Land Holding Requirements; Policy Reasons and Impacts

3.1.1.1. Engagement in Agricultural Activity

[114] FDRE Rural land administration and Use Proclamation, proc. No. 456/2005 Art.5 (1) a
[115] FDRE Rural land administration and Use Proclamation, proc. No. 456/2005 Art.5 (4)
[116] Tesfaye Teklu (n43)
[117] FDRE Rural land administration and Use Proclamation, proc. No. 456/2005 Art.8 (1) and (5)
[118] Achamyeleh Gashu Adam (n63)

Agricultural activity has been practiced for centuries in Ethiopia. The overall activity is centered on grain production as a source of livelihood.[119] The activity has character of monoculture (i.e. producing singe product like coffee growing) and poly-culture (i.e. traditional rotation of crop and livestock).[120] According to the FDRE Constitution; any Ethiopian who wants to engage in farming (i.e. who prefers to be peasant) can access rural land without payment and they are protected against eviction from their possession.[121] The FDRE rural land administration and use proclamation also provides "peasant farmers engaged in agriculture for living shall be given rural land for free".[122] In the same vein the regional rural land use and administration laws of Amhara, Benishangul-Gumz, Oromiya, Tigray and SNNP also provide that 'any farmer who is in need to engage in agricultural activity has the right to acquire land for free'.[123]

In addition, some of regional rural land administration and use regulations also deal with the condition of engagement in agriculture. For instance, the Amhara and SNNP regional land administration and use regulations provides requirement of engagement or wishing to engage in agricultural activities as a condition to acquire rural land for free.[124] So the law is clear that there is a condition to access rural land (i.e. need to engage in agriculture, not for other business).

This condition has its own policy reason. It seems to protect land degradation and to encourage the farmers to use the land properly, to promote engagement in agricultural activity for food

[119] Temesgen Gebeyehu Baye, 'Poverty, Peasantry and Agriculture in Ethiopia' (2017) Annals of Agrarian Science, 420; available at < http://dx.doi.org/10.1016/j.assci.2017.04.002 > accessed January 20, 2019

[120] Ibid

[121] The FDRE constitution Art.40 (4),

[122] EFDR Rural land administration proc. No. 456/2005 Art.5 (1) (a)

[123] See the Revised Amhara National Regional State Rural Land Administration and Use proclamation, Proc. No.133/2006 Art.6(1); Benishangul-Gumz Regional State Rural Land administration and Use Proclamation, proc. No.85/2010 Art.6 (1); Oromiya Regional State Rural Land Use and administration Proclamation, proc. No.130/2007 Art.6(1) Tigray Regional State Rural Land administration and Use Proclamation, proc. No.136/2000 Art.5(1) a; and SNNPR Rural Land administration and Use Proclamation, proc. No.110/2007 Art.5(1)

[124] Amhara National Regional State Rural Land Administration and Use Regulation, Reg. No.51/2007 Art.4 (1); see also SNNPR State Rural Land Administration and Use Regulation, Reg. No.66/2007 Art .5 (1) a and b

security purpose and initiate holders to take necessary conservation measures.[125] In this case the other issue is, from where the land is accessed. Such kind of land is accessed by changing communal land to private holdings.[126] The requirement entails positive (i.e. it promote engagement in agriculture for food security issues) and negative (i.e. restricts rural land access right for every one) impact.

3.1.1.2. Livelihood

The other requirement provided under Ethiopian land law to access rural land is the holding must be for livelihood. Livelihood is adequate stocks and flows of foods and cash to meet their basic needs.[127] The EFDR rural land administration and use proclamation uses the term "…for a living".[128] The farm activity on the holding must be the only source of income for the farmer and his family. The Amhara and Oromiya regional proclamations deprives the land use right of household when the farmer engaged in non-farm land activity for livelihood.[129]

In the case of Tigray, the regional proclamation expressly deprives land use right or access for private holding for those who earns monthly income of more than 1000 (one thousand Ethiopian birr) from serving in governmental or non-governmental organizations to support the livelihood.[130] The SNNPR land administration law provides females whose husband is engaged in government service or in any other legal activity have the right to access rural land.[131] In

[125] The EFDR Rural land administration proc. No. 456/2005 preamble
[126] Daniel Behilu Gebreamanuel, *Transfer of Land Rights in Ethiopia: Towards a Sustainable Policy Framework* (eleven International Publishing, 2015) 38
[127] ECA, 'Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa (2004)24
[128] EFDR Rural land administration proc. No. 456/2005 Art.5(1) (a)
[129] the Revised Amhara National Regional State Rural Land Administration and Use proclamation, Proc. No.133/2006 Art.12 (1) (a); and see also the Oromiya Regional State Rural Land Use and administration Proclamation, proc. No.130/2007 Art.5(1)
[130] Tigray Regional State Rural Land administration and Use Proclamation, proc. No.136/2000 Art.12 (3) (e)
[131] SNNPR Rural Land administration and Use Proclamation, proc. No.110/2007 Art.5 (7)

Benishangul-Gumuz regional land administration and use law, civil servants shall not obtain rural land for free in the region and prohibits engagement in non-farm activity.[132]

According to Dr. Daniel, this requirement is provided to protect and give priority for those who have no farm land and have no access to land by rent or sharecropping and any other means.[133]

3.1.1.3. Age

The Ethiopian land law recognizes "age" requirement as a condition to access rural land providing that, any Ethiopian who wants to engage in agriculture for livelihood should attain the age of eighteen or more to access rural land for free. This age requirement is provided under regional land law.[134] The law also governs the issue of children right to hold rural land; provides that the children who lost their parents due to different reason shall have the right to use rural land through legal guardians until they attain the age of 18 years.[135] According to family law, when miner lost his or her parent the tutor or guardian of the miner represents child.[136]

The regional land proclamations and regulations of SNNPR, Tigray and Amhara also recognize this in the same manner.[137] In the case of Oromiya, the regional land use and administration proclamation is silent. It is important to bear in mind that, attaining 18 years by itself does not entail the right to acquire rural land for free. The policy reason is to open land access opportunities for those who decide to search for own livelihood income through attaining the

[132] Benishangul-Gumuz Regional State Rural Land administration and Use Proclamation, proc. No.85/2010 Art.6 (9) and Art.13 (1) (a) and (e)

[133] Daniel Behilu Gebreamanuel (n126)

[134] See the SNNPR Rural Land administration and Use Proclamation, proc. No.110/2007 Art.5 (2); Tigray Regional State Rural Land administration and Use Proclamation, proc. No.136/2000 Art.5 (1) (d); Revised Amhara National Regional State Rural Land Administration and Use proclamation, Proc. No.133/2006 Art.6 (1), Benishangul-Gumuz Regional State Rural Land administration and Use Proclamation, proc. No.85/2010 Art.6 (9) and Art.6 (1) (b); and Oromiya Regional State Rural Land Use and administration Proclamation, proc. No.130/2007 Art.5(1)

[135] EFDR Rural land administration and use proc. No. 456/2005 Art.5(1) b

[136] The Revised Family Code of Ethiopia, Federal Negarit Gazetta Extra Ordinary Issue No.1/2000 Proc. No.213/2000 Art.269

[137] See the SNNPR Rural Land administration and Use Proclamation, proc. No.110/2007 Art.5 (8); Tigray Regional State Rural Land administration and Use Proclamation, proc. No.136/2000 Art.5 (1) (d) and Revised Amhara National Regional State Rural Land Administration and Use proclamation, Proc. No.133/2006 Art.6 (2); and see also Amhara National Regional State Rural Land Administration and Use Regulation, Reg. No.51/2007 Art.4 (1)

required age and to engage in agriculture. In addition, the law allows miners those who does not attain the required age can administer the property through their guardians. This is for social security objective; thus, to protect property interest of those who lost their parents due to different reasons especially HIV Aids.[138]

3.1.1.4. Residence

The other major feature is that unlike the federal proclamation which states 'this proclamation shall apply to any rural land in Ethiopia'[139], regional government proclamations restrict access and use right to rural land by making requirement of residence in that particular region. Residence is not defined in the land laws; thus the Civil Code of Ethiopia as a place where a person normally resides.[140] The regional land laws of Oromiya and SNNPR provides about requirement of residence in the region and recognized as a prerequisite to access and use rural land.[141] The Amhara regional land administration and use proclamation clearly provides that "the right to hold rural land can be given by distribution from government for the one who resides in the rural area of the region regularly".[142] Disappearance for more than five year without notifying where about, without renting or assigning legal administrator, entails deprivation of the holding right.[143]

However, person residing in an urban center for education, national service, or similar duty on a temporary basis can be considered a rural resident.[144] In Benishangul-Gumz regional land administration and use proclamation clearly stipulates a person who permanently resides in the

[138] Federal Justice Organs Professionals Training Center, *Revised Module on Rural and Urban Land Law* (2004)20
[139] EFDR Rural land administration and use proc. No. 456/2005 Art.4
[140] Civil Code of Ethiopia, Negarit Gazetta: Gazette Extraordinary Proclamation No. 165/1960, Art.174
[141] Oromiya Regional State Rural Land Use and administration Proclamation, proc. No.130/2007 Art.5(1); see also The SNNPR Rural Land administration and Use Proclamation, proc. No.110/2007 Art.5 (2) and (12)
[142] Revised Amhara National Regional State Rural Land Administration and Use proclamation, Proc. No.133/2006 Art.7 (1) (a) and Art.5 (2)
[143] Ibid Art.12 (1) (b)
[144] Amhara National Regional State regulation No.51/2007 Art.4.1 and 4.2

region can acquire rural land from kebele administrator.[145] In the case of Tigray, it expressly prohibits towers inheritance to the rural land.[146] The regional land laws of both, the Tigray and Benishangul-Gumz regions fill the gap, while it is vague in others. This is provided by the law for the reason that it enhance land use right of farmers.[147]

The impact of this requirement is the law may impede rural-urban migration and diversification of livelihood even by moving into other rural areas. The law forces peasants to permanently stay in a specific rural area and not to be engaged in nonfarm activities.[148] Many also criticizes the land law regime restricts freedom of movement. And it is against the right to diversification of income.[149]

3.1.1.5. Family Membership to Inherit

The rural land laws of Ethiopia provides family membership requirement as a preference to others to access rural land for free by inheritance and donation. The federal rural land law also defines 'family member' as "any person who permanently lives with the holder of holding right sharing the livelihood of the later".[150] Accordingly transfer of the land use right in the form of inheritance and donation is allowed only to the right holder's family members who are residing in the rural kebele and are engaged in or wish to engage in agriculture. This means those who are residing in other rural kebele, non-rural residents, and those who do not want to engage in agriculture do not have the right to get rural land through donation or inheritance.[151]

[145] Revised Amhara National Regional State Rural Land Administration and Use proclamation, Proc. No.133/2006 Art.7(1) (a)
[146] Tigray Regional State Rural Land administration and Use Proclamation, proc. No.136/2000 Art.17 (2) (d)
[147] EFDR Rural land administration and use proc. No. 456/2005 the preamble.
[148] Getnet Alemu Zewdu and Mehrab Malek (n163)
[149] Daniel Behilu Gebreamanuel (n126) 199
[150] Art.2 (5) of FDRE Land administration and Use proclamation No.456/2005
[151] Getnet Alemu Zewdu and Mehrab Malek (n163)

Regional laws of Tigray, Amhara, SNNPR, Benishangul-Gumuz and Oromiya states provide in the same manner in terminology and context to that of the federal one.[152] Accordingly, being family member or child is not enough to access rural land from the family; rather it must be proved that the beneficiary of inherited or gifted land should have no regular income. In case of Amhara the law does not exclude those who live in town by working in small business to support the family (i.e. they are considered as family member).[153]

Furthermore, the regulation of Amhara region provides that when the holder has no family or minor children he can transfer the holding by will to any other person who wants to engage in agriculture.[154]

And there is no blood relationship requirement to be a family member for the purpose of access to rural land by donation or inheritance from the holder.[155] This is supported by federal cassation decision, the court ruled that land can be transferred to family members as per law of succession, but those who have no other income or their livelihood is dependent on the land shall have priority right.[156] In addition the court decided that family membership should be interpreted to include only those who have blood relationship with the holder.[157] The rural proclamation intends to protect access to land of those are members of the household who lives with the deceased and who likely continue farming as a source of livelihood.

3.1.1.6. Building Residence (in Tigray)

[152] Oromiya Regional State Rural Land Use and administration Proclamation, proc. No.130/2007 Art.9; see also Revised Amhara National Regional State Rural Land Administration and Use proclamation, Proc. No.133/2006 Art.2 (6)
[153] Ibid Art.16 (2)
[154] Amhara National Regional State Rural Land Administration and Use Regulation, Reg. No.51/2007 Art.11 (1) and (2)
[155] Daniel Behilu Gebreamanuel (n123) 40
[156] The Supreme Court of Ethiopia Cassation Decision 2008, Vol.19 case no. 108335; see also the Supreme Court of Ethiopia Cassation Decision 2007, Vol.18 case no. 109776
[157] The Supreme Court of Ethiopia Cassation Decision 2007, Vol.18 case no. 105092

This condition is a departure from the federal and other regional land administration and use laws (i.e. it is only recognized under the Tigray regional revised administration and use proclamation). The proclamation of the region provides that land will be given for those who attain the age of eighteen (18) from demarcated land for purpose of building residence. In this case the law provides its own procedure to give the land and it answers who shall come first. Accordingly, the person who return from refugees take the advantage and those who lost their rural land use right due to different legal reasons in the region (with age priority among them i.e. elders are treated first) are treated secondarily.[158] In addition if there is no land demarcated for purpose of building residence, the land can be taken from non-farm land of the kebele. In some circumstance the family can also provide the land for purpose of building residence.[159]

Furthermore, the area size of the land which will be given to build residence is 20×20m.[160] The proclamation provides detail rules regarding the land. The area seems small but it is enough, so that it is not for farm purpose and it is a good opportunity to access land. The only limitation provided under the proclamation is, the householder or any peasant who get land to build residence cannot construct home on the other farm land than on the land given to him to build residence.[161]

3.2.Minimum Holding Size and Time Restrictions; Policy Reasons and Impact

3.2.1. Registration of Rental Contract with Time and Size Limit

The federal rural land administration and use proclamation recognizes that, a rural landholder who has a holding certificate can rent or lease the land to any person (rural or urban) who is or wishes to be engaged in agriculture for a specific period of time in a manner that shall not

[158] Tigray Regional State Rural Land administration and Use Proclamation, proc. No.136/2000 Art.25 (1) and (4)
[159] Ibid Art.25 (2) and (5)
[160] Ibid Art.25 (3)
[161] Ibid Art.11 (1) (e)

displace the landholder.[162] Rental contracts can be up to 25 years and may be renewed afterwards. However, the farmer or the holder cannot not lease or rent the whole holding. The remaining holding should be enough to produce annual food consumption for farmer's family.[163] In addition agreement made is not considered legal, without the consent of all members (those who have use right on the land) and registration of contract by relevant body.

The regional rural land administration and use proclamations and regulations also provide the requirement of registering contract in different manner.[164] In Oromiya region aged, disabled, orphan and woman; are allowed to transfer their holding by agreement.[165] Specifically the in Oromiya and Tigray the farmer cannot transfer more than half of his farm land by lease or rent.[166] When we come to SNNPR the holder can transfer the size which is sufficient for intended agricultural purpose without displacing the original holder.[167] This limitation is provided to protect the peasant from losing the livelihood. In Benishangul-Gumuz and Amhara rural land administration and use proclamations also provide the right to transfer rural land for peasant/private investors by contractual agreement.[168] However most of the time rental contracts are entered without registration for different reasons such as; lack of awareness as to its future

[162] FDRE Land administration and Use proclamation No.456/2005 Art.5 (4) (a) and Art.8 (1)

[163] Getnet Alemu Zewdu and Mehrab Malek, 'Implication of Land Policies for Rural-Urban Linkages and Rural Transformation in Ethiopia' (ESSP 2 Working Paper No.15, 2010) 9

[164] Ignacio Fiestas, John Leckie and Christina Mayer, 'Land Governance in an Interconnected World: Formalizing Land Rental Transaction in Ethiopia Is Land Certification Enough?' (Annual World Bank Conference on Land and Poverty, the World Bank, Washington DC, March 19-23, 2018)17

[165] Oromiya Regional State Rural Land Use and administration Proclamation, proc. No.130/2007 Art.6 (14)

[166] Tigray Regional State Rural Land administration and Use Proclamation, proc. No.136/2000 Art.6 (1) and Oromiya

[167] The SNNPR Rural Land administration and Use Proclamation, proc. No.110/2007 Art.8 (1); see also SNNPR State Rural Land Administration and Use Regulation, Reg. No.66/2007 Art .8

[168] See Benishangul-Gumuz Regional State Rural Land administration and Use Proclamation, proc. No.85/2010 Art.6 (5) and; see also Revised Amhara National Regional State Rural Land Administration and Use proclamation, Proc. No.133/2006 Art.6 (3); see also Amhara National Regional State Rural Land Administration and Use Regulation, Reg. No.51/2007 Art.12

consequence, inconvenience to access the service due to distance, and even if they understand its benefits they see it as it is not necessary.[169]

The policy reason for legal restriction on size and duration is to protect peasant holders and minimize the risk of losing the use right through time. Though the holding right resides on the original holder, long term rental contracts have effect of losing the use right. However, it is argued that it is not sound reason to restrict the transaction to minimize the risk of losing the use rights. On the other hand it is argued that providing such limitation is important to solve problems in relation to rental contract early. The time difference (i.e. transfer for peasants, investors) is provided intentionally that to open a room for investors to invest for long term.[170]

3.2.2. Minimum Holding Size Restriction

The other requirement provided by the rural land law of Ethiopia is the condition of minimum farm size. The federal proclamation defines minimum size holding as "the size of rural land holding the productivity of which can ensure food security of peasant and pastorals or semi-pastorals family, or which suffices for crop farming, grazing, house construction and garden".[171] In the same proclamation minimum private holding is defined as "a rural land in the holding of peasants, semi- pastoral and pastoral or other bodies who are entitled by the law to use the rural land".[172]

In recognition of the fragmentation of land parcels and poor technology (poor farm management with limited improved seeds, fertilizer, irrigation and pesticide application), the federal proclamation provides that, the farm plot to be given in the future shall not be less than the

[169] Ignacio Fiestas, John Leckie and Christina Mayer (n161)18
[170] Federal Justice Organs Professionals Training Center, *Revised Module on Rural and Urban Land Law* (2004) 49
[171] FDRE Land administration and Use proclamation No.456/2005 Art.2 (11)
[172] Ibid Art.2 (12)

minimum size holding.[173] In addition it also provides when the rural land is transferred by succession the size of the plot shall not be less than the minimum size holding.[174] In this case the proclamation does not provide the minimum size; the size number is required to be provided by the regional land regulations.

According to the rural land administration and use regulations of Amhara minimum size of a plot of land given for a person is not less than 0.2 hectare if the land is cultivable by rain and it may not be less than 0.6 hectare when the land is cultivable through irrigation.[175] If the size of land to be transferred among different inheritors is below the minimum size, alternatives like collective use, offering for rent, exchanging with another person, or any other kind of agreement which satisfies the minimum size can be explored.[176] Furthermore, transfer of rural land through inheritance cannot be put into effect if the total land to be possessed by any person at the time of inheritance exceeds 7 hectare in the highlands and semi-highlands, and 10 ha in the lowland areas.[177]

In the case of Tigray it is not determined yet, while in Oromiya the minimum size of farm used in rain-fed land for annual is 0.5 hectare. In the case of SNNP the size shall not be less than half hectare if the land is cultivable by rain, and it may not be more than half hectare when the land is constructed on the expense of government cost and cultivable through irrigation.[178] The regulation deals with use of rural land holding among orphans who lives with legal guardians; thus it provides that if the holding is less than 0.5 hectare they should use the land jointly. And if

[173] Getnet Alemu (44)
[174] FDRE Land administration and Use proclamation No.456/2005 Art.11 (2)
[175] Amhara National Regional State Rural Land Administration and Use Regulation, Reg. No.51/2007 Art.7
[176] Amhara National Regional State Rural Land Administration and Use Regulation, Reg. No.51/2007 Art.11 (11)
[177] Amhara National Regional State Rural Land Administration and Use Regulation, Reg. No.51/2007 Art.11 (12) and 5 (3)
[178] SNNPR Rural Land administration and Use Proclamation, proc. No.110/2007 Art.11 (1)

there is in-convenience to use the land jointly, they can rent and share the income among them.[179]

In this regard, due to population growth it is worth considering that how the younger generation could access rural land; thus the proclamation provides there is no transfer of holding unless it is compatible with minimum legal size of the land. On the other hand the parents transfer their holding and use right by inheritance and donation to their descendants the size of the holding gets fragmented. Most of regional states have no enough farm land, while the regional land laws promised to access rural land laws for all residents.[180]

The requirement of size limit is provided to promote and to be in-line with food security strategies in which Ethiopia is working on. And it is to determine the size which is sufficient to the agricultural activities which is enough for the livelihood of one's family. In addition, one of characteristics Ethiopian agriculture is traditional farming system with in a small size of holding, farm size is one of the critical determinant factors of agricultural output. However, fragmentation is unabated because of regular in-house redistribution.[181] Parents redistribute their land to their children when the children establish their own family. Although this is partly explained by fear of further government redistribution, the major explanation is the failure of the economy to offer jobs in the nonagricultural sector. Farm households are also discouraged by law from migrating to take advantage of better opportunities. Farming on fragmented farm plots means the number of working hours spent per unit area significantly increases and overall cost tends to rise with the

[179] SNNPR State Rural Land Administration and Use Regulation, Reg. No.66/2007 Art .5 (3) b and Art.5 (4) a
[180] Derek Headey and others, 'Land Constraints and Agricultural Intensification in Ethiopia: A-Village Level Analysis of High-Potential Areas' (EDRI, 2013) ESSP WORKING PAPER #58, 11
[181] Getnet Alemu Zewdu and Mehrab Malek (n163)

resultant decrease in production. Due to this the Ethiopian land laws provide restriction on size of farm.[182]

3.2.3. Impacts of Size Restriction on Access, Use and Transfer

3.2.3.1. Impacts of Size Restriction on Access and Use

Land is a vital source of capital, which opens personal credit market and leads to investments in the land.[183] Access to land provides a valuable safety net as a source of shelter, food and income in times of hardship. Furthermore, access to land affects a broad range of fundamental human rights. Particularly In rural areas, the realization of the right to livelihood (including the right to water, the right to health, the right to work,) is interconnected to the availability of land.[184] According to international principles and interpretive documents, it is necessary to recognize land access right; for it is important to facilitate the realization of human rights.[185]

The legal system of a certain country may provide restriction on access to land by providing certain conditions to be mate. Thus, restriction on land access amounts to restriction on exsercise of rights which are related to land and property, and to be benefitted from the advantages which the land gives. It can also affect human right in one or another way.

3.2.3.2. Impacts of Size Restriction on Transfer

Restrictions on transfer are legislative constraints that preclude transfers of certain land. Legislation may limit the pool of people to whom land can be transferred, delineate acceptable modes of transfer (e.g. gift v. sale), and require approval of a government official before a

[182] Ibid
[183] Alain de Janvry and Elisabeth Sadoulet, *Access to Land and Land Policy Reforms* (United Nations University, 2001)17 < https://www,staff.ncl.ac.uk>AEF806 > accessed January 1, 2019
[184] Joseph Schechla (n62); see also Samuel Gebreselassie (n19)
[185] See Elisabeth Wickeri and Anil Kalhan (n26); see also ECA (n127) 22

transfer.[186] From a Rule of Law perspective, restrictions on land sales and rentals are restrictions on enforcement of contracts as well as limitations on property rights.

When we come to impacts of minimum size holding restriction particularly, restrictions on transfer of land holding and use right can gut the value of the asset by reducing its monetary value and limiting the owner's potential uses of the land to diversify livelihood options beyond those that are land-based. In addition, it reduces access option for others.[187]

3.3.Experience from Other Jurisdictions

The negative impacts of land fragmentation on development of land rights transfer are widely documented. Many countries have aimed to reduce fragmentation of land and to promote consolidation through formal programs.[188] On the other hand there are countries which provide policy instruments of restriction; thus, the policy reasons vary from jurisdiction to jurisdiction. The policy reasons can be to protect the tenant, (local) owner-cultivator and prevent fragmentation. Policy instruments include, for example, restrictions on nationality or residency of owners/holders; restrictions on size of the holding; on price of sell or rent and duration.[189]

The legal regime of Norway, Poland and Slovakia recognizes requirements of residency and size for purchasing agricultural land. In Norway, that buyer of agricultural land must live on the property for a minimum of five years. In addition preference is given to buyers whose stated occupation is farming. Furthermore, the principle of Domicile is required for transfer via sale contract of agricultural holdings larger than ten hectares, or more than 3.5 hectares of arable land, is conditional on the owner residing on the property *in persona* for a minimum period of

[186] Tim Hanstad, Robin Nielsen and Jennifer Brown, 'Land and Livelihoods: Making Land Rights Real for India's Rural Poor' (2004) LSP Working Paper, 24

[187] OECD, 'Land Use Restrictions As Barriers to Entry' (2008) DAF/COMP, 2008, 25; see also Frank Byamugisha (182)16

[188] Jayne Glass and others, 'Research on Interventions in Land Market and Limits the Concentration of land Ownership Elsewhere in the World' (2018) Commissioned Report No.: 001, 5

[189] Jayne Glass and others (n188) 8

five years. This is to ensure that, remote rural areas continue to be populated. A minimum rental period of ten years exists for tenants of arable land as a prerequisite for receiving a concession to buy the land.[190]

In Poland, buyers are required to have lived in a given locality for five years before purchase and to pledge to work the purchased land themselves for a decade. In Slovakia, where a preference order for buyers based on residency/experience is in operation, the priority buyer must have farmed for three years in a municipality to buy a plot there.[191] In Canada, there is restriction on size limits which can be transferred to foreigners by contract of sale for it is affecting rural communities by dominating local agricultural interests, with negative impacts on the availability of farmland for residents. Poland also restricts the maximum size of the holding for preventing the excessive aggregation of land by an individual or entity.[192] In Slovakia, land parcels may not be divided into plots smaller than 0.5 hectares of forest land (except for in community forests) and 0.2 hectares of agricultural land.

When we come to Switzerland, division of agricultural land for non-agricultural purposes is forbidden, and division of agricultural land for agricultural purposes must not result in plots less than 2.5 hectares. In addition, there is restriction that prohibits felling of forest for settlement (development) purposes.[193] Rwanda used consolidation via restrictions on sales or rentals limits ability of farmers to adjust optimally the fragmentation of their holdings over time.[194] The most recent of the land consolidation activities in Sub-Saharan Africa is from Rwanda, which prohibits fragment of plots of land reserved for agriculture and animal resources if the result of

[190] Jayne Glass and others (n188) 34
[191] Jayne Glass and others (n188) 20
[192] Jayne Glass and others (n188) 17
[193] Jayne Glass and others (n188) 32
[194] Robert Eastwood (n89)

such subdivision leads to parcels of land of less than a hectare in size for each of them.[195] This restriction is provided for sustainable economic development and to ensure social welfare.[196]

When we come to Ghana, there are restrictions on sales of customary land to non-community members imposed by customary law.[197]

Regarding rental land markets there are countries which totally ban land rental contracts. For instance, in India land transfer right via rental contracts is prohibited, motivated by a desire to assure that the holders actually farmed them; thus it leads to informal land tenancy.[198] On the other hand, rental market is recognized with restrictions in countries such as; Uganda where they are intended to protect tenants from high rents or eviction and in Ethiopia where they are intended to protect smallholders from being dispossessed but, in both countries, they have ended up affecting the land-poor by reducing their access to land.[199] On the other hand, when and where restrictions were imposed or tightened, land rental activities went down with adverse impacts on the land poor and productivity.[200]

[195] LANDac, 'Food Security and Land Governance Fact Sheet: Rwanda' (2016)3; see also, African Development Bank (192)11

[196] African Development Bank, 'Land Tenure Regularization in Rwanda: Good Practices in Land Reform' (2016) 15; and see also Rwanda Civil Society Platform, 'Analysis of Land Expropriation and Transfer Process in Rwanda: Final Report' (2017) 35

[197] Frank Byamugisha (199)15

[198] Kenneth W. Dam, 'Land Law and Economic Development' (2006) Chicago Working Papers in Law and Economics 15

[199] Frank Byamugisha, 'Securing Land Tenure and Easing Access to Land' (2016) Background Paper Prepared for African Transformation Report 2016: Transforming Africa's Agriculture, ACET and JICA-RI, 4

[200] Frank Byamugisha (199)16

CHAPTER IV: EXPERIENCE FROM GURAGHE ZONE

4.1.Introduction

This chapter analyzes issues related to applicability of minimum rural land holding requirements in particular reference to size restriction provided under Ethiopian land law and the experience in Guraghe Zone. To identify issues related to the objective in the study area, the researcher expanded and analyzed the data collected through relevant literature review, own participant observation, interview and analysis of dead court cases comprehensively. Hence, first sections of this chapter deals with, applicability of minimum size holding requirements in relation to access, transfer and use aspects, and impacts are the issues discussed in first section of this chapter. It analyzes weather or not the rural youth miners and women access land holding, the manner in which these groups hold land and its size. It also deals with transfer of land holding and their impacts.

The next section focuses on challenges and opportunities pertaining to applicability of land holding size and other requirements in Guraghe Zone. Finally, the chapter ends with discussion of issues of some policy recommendations under the current reform going in the country. Particularly the research portrays hard realities to show the experience of Guraghe Zone with respect to land access and minimum size holding requirements.

4.2.Applicability of Minimum Holding Size Requirements

4.2.1. Land Access; Overview

Land is a major asset and a base for livelihood of most peasants in Guraghe area. Though the law recognizes the right to hold, use and transfer rural land for any Ethiopian without payment, from the year 1980s onwards (i.e. under the regime of FDRE) there was no uniform land distribution

to the residents. The only exception is land grant for militia or national defense force members. In addition rural youths access land holding with administrative and procedural complexities.

As the researcher observed in the study area, land holders use the land for cultivation of perennial crops like enset, coffee, khat, eucalyptus tree and grass trough traditional methods they learn from their ancestors. Informants from different Kebeles where the researcher has made field observation pointed out that; most of holders accessed their holding through modes of family donation and inheritance.[201] In addition the average size of the holding of a house hold is one hectare.

Currently there are many holders who transfer the holding by contractual agreement. However, the agreement lacks legality for they agree to transfer the land use right for more than legally recognized duration provided under the law. In addition they may agree orally while the law provides the condition to register the copy of their agreement in Kebele or Woreda authoritative organ.[202]

According to Wolde, there are peasants who have small sized holding; have accessed rural land from Kebele administration in many kebeles like; Gardashe, Da-emir and Gomshe Kebele of Enemorina Ener Woreda. However in 2010E.C. the use right of peasants have been interrupted, thus the holders invest their labor and finance above average of ten years the Kebele administration re-take the land and registered it in to communal land.[203] The peasants take a legal action and they bring the case to the court. Finally the courts decided that the actions of Kebele

[201] Interview with Tesfu Asrat, local elder at Enemorina Ener woreda (Gunchire, March 26, 2019); Berhanu Bekele, officer of Land Administration Directorate in Guraghe Zone agriculture and natural resource directorate (Wolkite, April 10, 2019

[202] Interview with Aregash Girma, president of Cheha woreda court (Emdibir, April 03, 2019)

[203] Interview with Wolde Temesgen, judge at Enemorina Ener woreda court (Gunchire, March 13, 2019)

administrators have no legal basis and they should return the holding to the peasants.[204] Cases related to holding and use right are discussed under separate sub-section.

The rural community has no awareness as to the rights (to access, use and transfer) and restrictions recognized under the law.[205] Due to this the rural land-poor are not requesting the government to provide land, they did not observe the legal conditions provided under the law.

4.2.2. Traditional Instruments, Relevance and Land Holding Size

As highlighted in the in the background part of the introduction, the people of Guraghe have its own way of living and tradition. One of the traditional experiences operating in the area is instruments and measurement mechanisms of land holding. Accordingly, under this section the researcher discussed about traditional instruments used to measure a single plot/holding and their relevance. In addition, the size of holding in the study area is highlighted.

4.2.2.1. The Instruments Used to Measure the Size of Holding and Conversion

The local community uses instruments instead of meter such as; *gasha*, *wedere*, *zeng*/*xzir* and *kind*/*hinee*, to measure a single plot of holding with a slight difference from area to area based on geographical difference where the holding resides. Informants reveled that;

> "…there are traditional instruments used to measure land holding size. There is the so called *gasha* or *ye-balabat-mereet* which is amounted to one hundred *wedere*. This instrument was used during the Imperial and Derg regime and it is not being used currently. We have also wedere and the length of 1 *wedere* is

[204] Interview with Wolde Temesgen, judge at Enemorina Ener Woreda court (Gunchire, March 13, 2019)
[205] Interview with Aregash Girma, president of Cheha Woreda court (Emdibir, April 03, 2019)

equals to 24 *xzirs/zengs* while *ye-wedere-gibtt* (i.e. half of wedere) is equivalent to 12 *xzirs/zengs*. In addition, the length of one *xzir* is seven *kinds*."[206]

There is a slight difference in relation to *xzir* from area to area (even within a single *Woreda*). For instance one *xzir*[207] is six and half *kinds* in Exza Woreda while it is eight in Cheha. In highland parts of Enemorina Ener Woreda one *xzir* is seven kinds and in low land areas, where land holding is not fragmented is twelve *kinds*.[208] The length of one *kind* can be between fifty and eighty centimeters. The traditional measurement can be converted in to hectare. Accordingly, one *wedere*[209] is considered and registered as one hectare (i.e.100×100 meter) and *ye-weder-gibtt* is 0.5 hectare (i.e. 50×50 meter). The size of 0.25 hectare is called *qintt* (i.e. 25×25 meter). This kind of conversion was used at first level registration and certification of holdings.

However, based on informants indication and personal observation of fields; there are problems pertaining to measurement of holdings. One of the problem is, peasant holders does not give the exact information about the size of their holding for they fear expropriation and to decrease cost of tax. The other problem is related to the system of measurement (i.e. the total length of a holding is not measured). In this case there is difference in size registered by land administration officials and the actual size which is being held and used. For instance, one hectare sized plot is 100 meter width × 100 meter length while the actual length is more than 100 meter. Those problems were avoided trough second level registration which uses GPS technology, which provides the exact information regarding to whom the holding belongs, size and each details.

[206] Interview with Tofik Abesha, local elder at Enemorina Ener Woreda and former land administration committee member and administrator in Enangera Kebele (Gunchire, March 26, 2019); and Interview with Mechal Mare, local elder at Exza woreda (Agena, April 9, 2019)
[207] Instrument made of stick which have length in between of 3.5 meters up to 4 meters
[208] Interview with Tofik Abesha, local elder at Enemorina Ener Woreda and former land administration committee member and administrator in Enangera Kebele (Gunchire, March 26, 2019); and Interview with Mechal Mare, local elder at Exza woreda (Agena, April 9, 2019)
[209] Instrument made of rope which have length of 100 meters

4.2.2.2. Relevance of Traditional Instruments

Those traditional instruments are used to masseur one side of the plot. In this case, only the width from the front side of the holding is measured, valued and calculated. The length of the holding relevant when there is transfer of the holding through contract of sale, for determines the market value or how much one *zeng/xzir* costs (i.e. the increase in length of holding entails the increase in price of one *zeng*).

4.2.3. Access for National Defense Force Members and the Size

According to informants, the only exceptional case in which rural land can be granted is when someone serves as a member of national defense and return back to the community by finishing his/her duty. The holding can be given by changing the Kebele communal (if any) land to private holding.[210] In this case it has no legal bases rather it is based on willingness of administrative bodies. As extracted from informants who are servants in militia office;

> "Before 1998E.C. there was a system in which, when the military member serve for 10 years can request to leave from the military membership. And those who have experience of 10 years were allowed to be given from rural or urban land where they want except in Dire Dawa and Addis Ababa; while those who serve for 20 years and more were allowed to be given from rural or urban land where they want including Dire Dawa and Addis Ababa land. However it was banned after 1998 due to the act of corrupted generals. And the size of the holding given is one hectare."[211]

[210] Group interview with Sebsbie Kore, Bizuwerk, Abdulwehab Nasir and Tegenu Degegu, officers of Enemorina Ener Woreda Agriculture and Natural Resource office: land administration Unit (Gunchire, March 13, 2019); interview with Tesfu Asrat, local elder at Enemorina Ener Woreda (Gunchire, March 26, 2019); and Interview with Aregash Girma, president of Cheha Woreda court (Emdibir, April 03, 2019)

[211] Interview with Murad Zerga, Mehbub Dino and Hile Melis, officers at militia office at Enemorina Ener Woreda (Gunchire, March 12, 2019)

The request for land grant can be submitted to administration in different ways. One way is the military member may submit the letter to zonal administration and the administration writes for Woreda administration. The other way is the applicant may submit the letter directly to Woreda administration.[212] When Woreda administration allows on cabinet decision, minimum of one hectare land holding can be granted from communal land where he/she want to reside.

4.2.4. Access for Rural Youth, Women and Miners and the Size

4.2.4.1. Rural Youth

The SNNP rural land administration and use proclamation and the regulation provide that, the rural youth who want to engage in agriculture have the right to participate voluntarily in settlement program to get and use rural land which is possessed by the community or government.[213] Though the law recognizes such right, in the experience of Guraghe Zone there is no resettlement program made by the government and the rural youth did not access to hold rural land; thus, they spend their cheap labor and time in the newly emerging towns to gain daily income for livelihood.[214]

Even there are youths who have land holding, which is transferred from their parents by inheritance; they did not want to engage in agricultural activity. Most of them migrate to rural area where ever they consider preferable for generation of income.[215] The reason is the holding they access through inheritance is very small in size, and there is a decrease in agricultural productivity due to due to external (environmental constraints) and internal (lack of technologies) factors.

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[212] Berhanu bekele, officer of Guraghe Zone land administration Directorate in agriculture and natural resource directorate (April 10, 2019)

[213] SNNPR rural land administration and use proclamation no.110/2007, Art.5; and see also See SNNPR State Rural Land Administration and Use Regulation, Reg. No.66/2007 Art.5 (1)

[214] Interview with Tesfu Asrat, local elder at Enemorina Ener Woreda (Gunchire, March 26, 2019); and Sebsibe Kore

[215] Melaku Benti, unit leader of land administration unit in Cheha Woreda agriculture and natural resource office (Emdibir, March 13, 2019)

The rural youth holds rural land when they form micro enterprise with a business plan to engage in agricultural activities.[216] They are given certificate of holding in the name of the enterprise. This is worked based on the rural youth policy and involvement of different institutions like; Omo-micro finance, Woreda youth and sport office, agriculture and rural development office and co-operation office.[217] The size of the land holding differs based on the business they engaged in. Tsegaye has informed the researcher that;

> First the youths of the age between 18-34 years, who have like mind to invest on a certain business are expected to form micro-enterprise and submit their business plan to Omo-micro finance institution for, it provide the budget. If the business they want to engage is agricultural activity the Woreda land administration office where they reside provides land in Kebele which is suitable for the business. And they have to save the profit for a period of four years with a yearly renewal of the contract. After four year investment they can take their saving and transform; thus they also return the holding to Kebele.[218]

When the enterprise is dissolved they lose the holding right and land holding returned back to the community or the Kebele communal land. The system has problems like; the land holding given for enterprise is parceled and transferred to each and every individual members of the enterprise. The other problem is it lacks continuity.[219]

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[216] Interview with Degu Abrar, Unit leader in association unit under cooperative office of Enemorina Ener woreda (Gunchire, March 25, 2019)
[217] Berhanu Bekele, officer of Guraghe Zone land administration Directorate in agriculture and natural resource directorate (April 10, 2019)
[218] Interview with Tsegaye Alemayehu, Officer at Youth and Sport Office of Enemorina Ener woreda (Gunchire, April 14, 2019)
[219] Interview with Mesfin Anteneh and Mikrachew Yirgago rural Youth Enemorina Ener woreda (Gunchire, April 14, 2019)

The minimum size of the holding given for agro enterprise is 0.25 hectare and its maximum is 16 hectare based on the business plan necessary for investment.[220]

4.2.4.2. Women

Although the formal legal system explicitly recognizes the equal rights of women[221] and prohibits discrimination against them, discriminatory application of the laws, enforcement challenges, high illiteracy rates, and socio-economic constraints often preclude women from exercising their rights.[222] Women have traditionally weak position in the patriarchal societies of Southern Ethiopia. They are considered as the property of men, and they have very little influence on which they would marry, requirements of widows to remarry the brother of the late husband to remain on household land. The step from being mere property to becoming an equal owner can therefore be long and difficult, even with legal reforms that support women's equal land rights.[223]

In the experience of Guraghe Zone this kind of traditional perception is being challenged by women and they began to exercises their rights recognized under the law.[224] Informants revealed that they involve in farm management decisions particularly, in crop choice to be cultivated and in land rental decisions.[225]

In relation to land holding and use right, women are the most vulnerable group in Guraghe Zone. It is due to cultural perception and even they are known with a motto saying that *"gered dereet*

[220] Interview with Degu Abrar, Unit leader in association unit under cooperative office of Enemorina Ener woreda (Gunchire, March 25, 2019)
[221] See SNNPR rural land administration and use proclamation no.110/2007, Art.6 (5) and the SNNPR State Rural Land Administration and Use Regulation, Reg. No.66/2007 Art.5 (2)
[222] Hirut Girma and Renee Giovarelli, 'Lesson 2: Implications of Joint Titling in Ethiopia' (2013) WRI and RDI; 4
[223] Stain T. Holden and Sosina Bezu (n259)2
[224] Interview with Interview with Melaku Benti unit leader of land administration unit in Cheha woreda agriculture and natural resource office (Emdibir, March 13, 2019); Muradu Teherku, local resident in Hured Kebele Enemorina Ener woreda (Hured, March 27, 2019); Abrar Zerihun, Registrar of Cheha woreda court (Emdibir, April 03, 2019); and Aberash Girma, president of Cheha woreda court (Emdibir, April 03, 2019)
[225] Ibid

eserana" which means 'women cannot hold or inherit land'. Currently, there is improvement that, women who have awareness as to their rights recognized under the law, knock the door of court and tries to protect their legal right particularly in the case of inheritance and property partition after divorce.[226]

According to informants from Cheha woreda the community accepts and enforces what the court orders, so those who get property by court decision can use the land without any challenge.[227] On the other hand informants from Enemorina Ener woreda indicated that, women face challenge to hold the land due to bad attitude and stereotypic understanding of the community which follows patriarchy system.[228] Sometimes the perception of widows and divorcees towards the ex-husband and his families is the other problem as Kalid and Nesru have informed;

> "…divorcees did not want to hold their part accessed through judicial enforcement of judicial partition for; they think that, it is hard to live with in the ex-husbands family and the community they belong. In addition the widow fears attack or harassment from the relative of the ex-husband."[229]

There is also experience of will full transfer of use right for their brothers as Almaz and Tebarek informed; most of women who did not claim for partition of property due to the reason that, they let their brothers to use the holding. [230] The community does not transfer the land holding and

[226] Interview with Wolde Temesgen judge at Enemorina Ener woreda court (Gunchire, March 13, 2019); Interview with Melaku Benti unit leader of land administration unit in Cheha woreda agriculture and natural resource office (Emdibir, March 13, 2019); Muradu Teherku, local resident in Hured Kebele Enemorina Ener woreda (Hured, March 27, 2019); Abrar Zerihun, Registrar of Cheha woreda court (Emdibir, April 03, 2019); and Aberash Girma, president of Cheha woreda court (Emdibir, April 03, 2019; Almaz Bmenga, Chairperson and Tebarek Abdo, officer at women and children affairs office of Enemorina Ener (April 11, 2019) Defar Alemu, Registrar at Enemorina Ener woreda court (Gunchire, March 13, 2019)

[227] Aregash Girma

[228] Interview with Wolde Temesgen judge at Enemorina Ener woreda court (Gunchire, March 13, 2019); and Kalid Bedru judge at Enemorina Ener woreda court (Gunchire, March 13, 2019)

[229] Interview with Kalid Bedru, judge at Enemorina Ener woreda court (Gunchire, March 13, 2019); and Nesru Atumza, legal officer at women and children affairs office of Enemorina Ener (April 11, 2019)

[230] Interview with Almaz Bmenga, Chairperson and Tebarek Abdo, officer at women and children affairs office of Enemorina Ener (April 11, 2019)

use right, rather they convert in to money.[231] Because, the land holding and use right is mostly accessed from family by gift or inheritance; thus land is not like other property which could be easily transferred to others. Rather, it is deemed to be under the control of the family line especially on the male side.[232] In general a woman has formal legal rights to inherit or access rural land. In addition widows and divorcees have the right to share the ex-husband's property including the holding equally. However there is problem in implementation of rules and enforcement of judgment.

4.2.3.4. Miners

The formal law recognizes miners have the right to hold rural land through their guardians.[233] When one of the Orphans attains the age of 18 has the right to administer the land being a guardian of his younger.[234] Regarding the experience of Guraghe Zone, traditionally most of children who lost their parents are moved to their closer relatives by blood (i.e. grandparents and uncle or aunts). The management of property and rural land was left to relatives or families of the husband. According to informants, the effect of losing both or one of them (i.e. the father or mother) differs. For instance, when the father is dead the mother continues to administer the property on behalf of children. In this case the positive attitude and willingness of family of husband is important. Because, as discussed above; women faces difficulties in relation to land and property right. Due to this she leaves the community and return back to her family with her children.[235]

When the mother passed away and the father alive, there is an opportunity to bring another wife. The same thing happens when they are divorced. So the property and land holding rights which

[231] Interview with Ashenafi Birega, Public prosecutor at Gumer woreda prosecutors office (Arekit, April 5, 2019)
[232] Kflework Tezera, officer at Gumer Woreda prosecutors office, (Arekit April 5, 2019)
[233] SNNPR rural land administration and use proclamation no.110/2007, Art.5 (8)
[234] See SNNPR State Rural Land Administration and Use Regulation, Reg. No.66/2007 Art.5 (3)
[235] Interview with Zinash Abera, Kidist Abrde, Mikrachew Yirgago and Mesfin Anteneh April 14, 2019

are required to be administered by the guardians is meant to be violated. So it needs multi sectorial cooperation to bring the legal rights to be implemented in the ground. In this regard government institutions like the women and children affaires offices; are working on awareness creation and protecting women and children rights are not to be violated. The other institution which is relevant in protection and implementation of rights of miner is the rural land administration office and the local LACs. The community and traditional institutions also have the duty to protect and cooperate for implementation of the rights recognized under the law.

4.2.4. Access for Private Investors, Government and Non-government Organizations and the Size

The rural land administration and use proclamation of SNNPR recognize the right to hold rural land for investors that engaged in agricultural development activities in accordance with investment policies.[236] The proclamation also provides that entities such as; organizations (i.e. governmental and non-governmental), social and economic institutions have the right to hold rural land in line with the development activity they engaged in.[237] Based on this legal ground many investors and investment activities have accessed rural land which is necessary (enough) for intended project in Guraghe Zone for agricultural purpose through lease contract for a specified period of time. Such land was given from communal land of kebeles or government land bank. There are also different social, governmental and non-governmental institutions operating in Guraghe Zone.

However, there are problems connected to government institutions and investors. The first, problem is due to institutional interference and violation of rules and procedures provided under the law, when they are exercising their power. The SNNPR regional investment bureau and

[236] SNNPR rural land administration and use proclamation no.110/2007, Art.5(15)
[237] SNNPR rural land administration and use proclamation no.110/2007, Art.5 (16)

bureau of agriculture and rural development have different role and power. The investment bureau cheeks fulfillment of requirements provided by the law and gives permission for investment while the agriculture and rural development administers the land. And the land for investment should be provided by the bureau of agriculture and rural development. In reality, this difference in power not observed; the regional investment bureaus dominate and operate as they are main actors, they give the permission and the land too. The second, problem is the problem of investors; thus some investors have been found holds the land which is different in size from the government allows.[238]

4.2.5. Residence of Holders and Engagement for Livelihood

The majority of rural land holders reside in the community where the land belongs and they use the land for cultivation of perennial crops like enset, coffee, khat, eucalyptus tree and grass trough traditional methods they learn from their ancestors.[239] There are also holders who did not reside in the community where the land holding exists; thus they engaged in non-agricultural activities and most of them are trader and servants (i.e. they have alternative source of income rather than agriculture).[240] The holders who did not reside locally use the land in different way; some others rent the land, some also plant eucalyptus tree and other crop while the rest fence the holding and use the land for grass which is considered to be improper use of the land.[241] As Berhanu informed, it is difficult to consider the system in which farmers use the land is improper for the reason that; there is no land use plan throughout the region.[242]

[238] Interview with Berhanu Bekele, officer of Guraghe Zone land administration Directorate in agriculture and natural resource directorate (April 10, 2019)
[239] Interview with Abrar Zerihun, Registrar of Cheha woreda court (Emdibir, April 03, 2019)
[240] Interview with Abrar Zerihun, Registrar of Cheha woreda court (Emdibir, April 03, 2019)
[241] Interview with Melaku Benti, unit leader of land administration unit in Cheha woreda agriculture and natural resource office (Emdibir, March 13, 2019); Muradu Teherku, local resident in Hured Kebele Enemorina Ener woreda (Hured, March 27, 2019); Abrar Zerihun, Registrar of Cheha woreda court (Emdibir, April 03, 2019);
[242] Interview with Berhanu Bekele officer of Guraghe Zone land administration Directorate in agriculture and natural resource directorate (April 10, 2019)

From 2010E.C. onwards land use study is being started in four sample Woredas of Guraghe Zone (i.e. in Meskan, Enemorina Ener, Cheha and Endegagn). The study is being made by the Woreda Agriculture and Natural Resource office in collaboration with Agricultural Growth Productivity (AGP). The study is targeted to be made in three or four sample kebeles at woreda level. For instance Kochira, Shanka and Hured Kebeles submitted land use plan in Enemorina Ener Woreda; while in Yewger, Yefereziye, Yewezxe and Megenase does the same in Cheha Woreda. The objective of the study is to come up with proper land use and administration and to minimize problems of food security of the family at house hold level.

According to the study and plan in Enemorina Ener woreda Kochira Kebele more than 30 land holder use there holding for grass and eucalyptus plantation.[243] Actually most of the holders use the land for agriculture and plantation of crops. The researcher also observed in field survey of 12 kebeles, that there are at list five holdings in each kebeles, which are left un-cultivated in Enemorina Ener woreda. Though it differs its extent such kind of land use experience is common other Woredas in Guraghe Zone. In this case the holder manages the total holding to enset, coffee, khat, eucalyptus tree and grass. The size of the holding managed to use for grass and tree is two third ratio of the holding, while the rest is used for enset, coffee, and khat.

In general, the researcher found that there is a clear non-compliance with rule provided under SNNPR rural land administration and use proclamation.

4.2.6. Transfer of Right and Compatibility with Legal Restrictions

4.2.6.1. Contractual Transactions; Size and Time

[243] Land use study Enemorina Ener Woreda Agriculture and Natural Resource Office

In jurisdictions where land sales and mortgages do not exist, the performance of land rental markets and associated contractual features are pivotal for agricultural productivity.[244] The SNNPR rural land administration and use proclamation allows rental transactions among peasants for durations of up to 5 years. In contrast, transactions with commercial (large-scale) investors are allowed for up to 10–25 years, respectively, for annual and perennial crops. To protect the rights of family members dependent on a farm's income and of future heirs, all members of the original landholder's family need to agree to the rental transaction. This feature makes it more difficult to transact in land, and therefore there is a trade-off between the objectives of equity and economic efficiency. The agreement needs to be approved and registered with local authorities.[245]

In addition the rural land administration proclamation and regulation of SNNPR prohibits renting the whole holding belongs to the farmer. When the holder has any other alternatives such as working as laborer, being hired by the investor, or to make business or any other better job opportunity, he/she can rent all of his holding.[246]

There is transfer of rural land holding through contractual agreement of rent. Those who did not reside in the area and those who have excess holding for their livelihood transfer the land via rent contract.[247] However, according to informants and observation of court cases, there are situations in which peasant holders enter in to contract without agreement of the whole family or at list the husband and wife.[248] There are court cases which have been seeking a judgment for cancelation of contract of rent due to absence of agreement among family members. Furthermore the legal

[244] Abebe D. Beyene, Mintwab Bezabih and Zenebe Gebreegziabher, 'Contract Duration Under Incomplete Land Ownership Rights: Empirical Evidence from Rural Ethiopia' (2012) EfD Discussion Paper Series EfD DP 12-09,1
[245] See details provided under SNNPR rural land administration and use proclamation no.110/2007, Art.6 (11) and Art 8 see also SNNPR State Rural Land Administration and Use Regulation, Reg. No.66/2007 Art.8 (1)
[246] See SNNPR State Rural Land Administration and Use Regulation, Reg. No.66/2007 Art.8 (1) (c)
[247] Gashe Gobiye rural land administration committee Enemorina Ener woreda, (Hurred Keble March 28, 2019)
[248] Sebrato Lenchaga, leader of Enemorina Ener woreda counsel and local elder (Gunchire, March 28, 2019)

regime provided to govern transfer of holding via rental transaction is being used for other illegal activity such as selling the holding and the size restriction is not considered. Above all, most of contractual agreements are not registered under the relevant body, rather they agree in traditional terms of trust or agreement the so called *qicha/gurdaa*. In recognition of the tradition the customary law provides that;

> "□□□ □□□□ □□□ □□□□ □□□□ □□□□□ □□□ □□ □□□□ □□□□□□□□ □□ □□□ □□□ □□□ □□□ □□□ □□□ □□□□ □□□□□□□ □□□□□ □ □□□□□ □ □□□□□□□ □ □□□ □□□□□ □□ □□□□□□ □ □□□□□□□ □□□□□□ □□□□ □□□□□□ □□□□□ □□□□ □□□ □□□□□□ □□□□□□□□ □□□ □□□□□□ □□□□□ □□ □□□ □□□ □□□□ □□ □□□□ □□□ □□□ □□□□ □□□□"[249]

Accordingly, the local perceive that the traditional system is more stringent and relevant than state made procedures for enforcement of contractual agreement; thus, they don't resort to formal systems.

4.2.6.2. Inheritance and Donation; Minimum Holding Size

Inheritance rights are restricted within the family, to certain family members, like to the oldest son or daughter, or be required to be equally shared among the children.[250] Though the issue of family membership is controversial, the intention of the law is to include those who live with the deceased by sharing the livelihood of inheritor (i.e. those who have no other source of income).[251] In the experience of Guraghe Zone; when the holder pass away each and every descendants are called for succession and partition of the property. The descendants called can be miner or major who have another many descendants, non-resident having another source of

[249] Guraghe customary law *qicha* (as amended, 2002) published by GPSDO, section 48.2 (1) transcription Is own
[250] Stein Holden and Tewodros Tefera (n26) 13
[251] SNNPR rural land administration and use proclamation no.110/2007, Art.2 (7) and Art.8 (5)

livelihood/income and residents who have been living with the holder.[252] Accordingly the holding is deemed to be transferred to all descendants equally using traditional measurement mechanisms without observing the minimum size condition provided by the law; thus it creates fragmentation of holdings. For instance, the if size of the holding 1 wedere which is equivalent 0.5 hectare can be sub divided in to the number of hairs using xzir while the law provides the holding which have the size of the same hectare shall not be sub divided.

There is no experience of transferring the land holding by mode of inheritance for those who have no blood relationship with the deceased. Informants have raised different issues and arguments when they were interviewed by the researcher. One of the points raised during the interview was; the issue of residence of inheritors included in partition of the property. Recent decisions of courts have a tendency to interpret the provisions of rural land administration in a manner that it excludes heirs who establishes their livelihood in other area.[253] Accordingly, there are legal practitioners argued that, those who are not residents and who have another source of income should be excluded from inheritance.[254] The principal conditions which are provided under the land law to access rural land for free (i.e. engagement in agriculture, residence and using for a livelihood) should be applied in the case of transfer.

In contrast, the other side of argument is; it is against fairness and equity to exclude inheritors for the reason that, law of succession is special in relation to transfer of property by inheritance. In addition, the socio-cultural and economic trend of the people of Guraghe, like that of other peoples in Ethiopia, is going away to work and support his/her family residing in rural area. And

[252] Interview with Melaku Benti unit leader of land administration unit in Cheha woreda agriculture and natural resource office (Emdibir, April 3, 2019); and Aberash Girma, president of Cheha woreda court (Emdibir, April 03, 2019

[253] Interview with, Nursefa Lema, special advocate at any court in Ethiopia, (wolkite, April 14, 2019)

[254] Sahiba Kedir, Registrar at Enemorina Ener woreda court (Gunchire, March 13, 2019)

excluding those who lives in city will disturb the social interaction and the value of helping each other which has been constructed for long.[255]

When we come to donation, the law recognizes as one mode of transfer of the land use right. In Guraghe Zone it is traditionally common practice to give property (movable or immovable). Even the customary traditional codified law allows and recognizes donation for spouses during the occasion of marriage.[256] The customary law provides that, "□□□□□□□ □□□ □□□□ □□□ □□ □□ □□□□ □□□□ □□□ □□ □□□□□□□□ □□□□□□ □□□□ □□□□ □□□□□ □□ □□□ □□□□ /□□□□□/ □□□ □□□ □□□□ □□□□□□□□□□" which means that, the family of the spouses can give property (*bitter*) and support those spouses when they enter in to formation of marriage. In addition the custom gives priority to male providing that "□□□□□ □□□□ □□□□ (□□□□□) □□□□□ □□□□ □□□ □□□□□ □□□ □□□□□□ □□□□□□ □□□□□ □□□□□□ □□□ □□□□□□□" it means, especially the family of male is as much as the possible they shall give property as a gift to support the spouses. In this case the customary law seems discriminatory against women, because it prefers male to be supported.[257] However the customary law does not provide the minimum and maximum size of holding which can be given. Due to this practically land use rights and other properties are donated from family to male descendants. The presumption is male has a burden to support and administer the house hold. Rural land donation contracts are registered in Zonal public prosecutor office.[258]

4.2.7. Some Recent Cases Related to Land Holding and Requirements

[255] Interview with Nursefa Lema special advocate at any court in Ethiopia, (wolkite, April 14, 2019)
[256] Guraghe customary law *qicha* (as amended, 2002) published by GPSDO, section 4.8 (1) transcription Is own
[257] Akalewold Tesema, '*Guraghe Society's Gender Morality and The Challenge it Faced From Ye kakie Wordot'* (MPhil thesis Addis Ababa University, 2015) .21
[258] Interview with Tsegaye Tekle, authentication and registration of documents unit leader at Guraghe Zone Public Prosecutor Directorate (wolkite, April 14, 2019)

The researcher has observed court cases which are entertained and have got a final decision. Currently most of the cases which are presented to courts are related to land holding interest in one or another way (i.e. even the criminal cases). The cases analyzed in this section are based on issues related to conflict of interest of holding between peasants who claims that, it is a holding which belongs to them and government or Kebele administration in view of protecting communal land. There is also a case related to disguise land sale which is made in cover of rental contract. In most cases parties to the litigation are individual peasants and the public prosecutor on behalf of Kebele administration. Having this in mind the following cases are selected to be discussed which are considered to relevant.

Case 1 Engeta Egzaga vs. public prosecutor

The court litigation, starts from *Kebele* (in 2009 EC), and the peasant brings the case to *Woreda* first instance court and ends up in Guraghe Zone High Court. The peasant takes legal action to the court claiming according to Civil Code Art.1149 for cessation of interference from his holding made by the Gardashe kebele administration based on the reason that, the administration takes the holding, while the land is accessed legally in 1980s. The public prosecutor argued that the land holding and use right is not accessed legally and it is taken without observance of the steps provided under the law. The main point of argument for public prosecutors is the manner of access. The Woreda and Zonal High courts decided against public prosecutor that there is interference. The prosecutor appeals to the SNNPR Supreme court, however the appellate court affirmed the decision of lower courts in 20/03/11E.c.[259]

[259] *Engeta Egzaga vs. public prosecutor* (2011E.C) Civil File no. 11735 (SNNPR Guraghe Zone Enemorina Ener Wereda Court)

However, the judgment is not still enforced because some of the community members in the kebele objected the decision of the court alleging that the holding should be returned to kebele communal holding. They prevented the enforcement of judgment using force.[260]

Case 2 Gemal Siraj vs. Heriya Lika

The applicant Heriya Lika brings the case to the court woreda court in 2009E.C. seeking decision for cessation of interference on the holding based on Art.1149 of the Civil Code which is made by the respondent from 2002E.C onwards on her holding. On the other hand respondent claimed in his pleading, that there is no interference and he is using the holding which belongs to him and the applicant has no interest. He also attach certificate of the holding and bring evidence which supports that the holding belongs to him and using the holding. The court entertained and decided on behalf of respondent, based on period of limitation. The reason of the court was the time to bring the case is lapsed; the law requires any person who wants to bring a legal action for cessation of the interference shall bring his/her claim within one year.[261]

Applicant brings another case to the same court for pituitary action (proof of original holding right vested on). In the latter case she reason out that, her husband transferred the holding to respondent through contract of sale while she was not absent. However the court decided again on behalf of the respondent for the reason on the judgment that still the applicant cannot proof that there is contract of sale.

In this case there are interesting facts like; both the applicant and respondent has certificate on the holding. In addition the land holding was actually transferred through sale for 300 (three hundred Ethiopian birr). Furthermore, the whole size of the holding before transferring some part is less than 0.5 hectare.

[260] Interview with Wolde Temesgen

[261] *Heriya Lika vs. Gemal Sani* (2009E.C) Civil File no. 10233 (SNNPR Guraghe Zone Enemorina Ener woreda Court)

Case 3 Tofik Bedewi, Mohamed Negash and Emam Bedewi vs. Public Prosecutor

In this case three peasants bring the case to *Woreda* first instance court in 2010E.C. and ends up in SNNP Supreme Court. The peasants takes legal action seeking for judgment according to Civil Code Art.1149 for cessation of interference which is made on their holding taken by Gomshe kebele administration based on the reason that, the administration takes their land holding, while the land is accessed legally and they improved their holdings. The three plaintiffs bring their claim jointly. The prosecutors argued that the holding belongs to kebele communal land; thus it is not accessed legally and there are steps to be observed. The Woreda court decided that plaintiffs have no legal right to claim for cessation of interference the land for the reason that, they did not proofed to the court that they accessed the holding legally. But the court protects their right to use the property developed on the holding as compensation.[262]

The prosecutor and the farmers cross-appealed against one another to the high court he decision of woreda court. The high court reversed the decision and renders a judgment that, the kebele administration should cease the land holding. However the prosecutors appeal and bring the case to SNNPR Supreme Court and the court returns the case to kebele level. The reasoning of the court is, according to the Rural Land Administration and Use Proclamation when rural land related disputes are raised Kebele LACs have a jurisdiction to entertain.[263]

As per the understanding of researcher from the court file, the land holding was accessed up on the request of plaintiffs. The Kebele administrators allowed the holding to be given for the plaintiffs. The attachment under figure 2 and 3 is a record of agreement of administrators to give the holding to Imam Kedir and Tofik Bedewi respectively.

[262] Tofik Bedewi, Mohammed Negash and Emam Bedewi V Gomshe Kebele Administration (2011E.C) Civil File no. 11596 (SNNPR Guraghe Zone Enemorina and Ener Wereda Court) decided on 18/10/2010E.c.

[263] *Tofik Bedewi, Mohammed Negash and Emam Bedewi V Gomshe Kebele Administration* (2011E.C) Civil File no. 12418 (SNNPR Supreme Court) decided on 29/05/2010E.c.

The researcher observed the same case in other Woredas, for instance the case between Nuredin Ahmed and public prosecutor is one of them. In this case the peasant brings legal action to the court claiming according to Civil Code Art.1149 for cessation of interference from his holding made by the Megenase kebele administration based on the reason that, the administration has made interference on his use right of the holding, while the land is accessed. And he proofed that he has been using the land by planting eucalyptus tree for a long. The public prosecutor argued that the holding right is not accessed legally and it is part of communal land of the kebele. The court render a judgment that, the peasants use right is interrupted by the act of kebele administration.[264]

There are three main points taken from the cases discussed above;

- ✓ The first one is involvement of LACs and kebele Administration in violation of rural land holding rights. The LACs become one of the sources of mall-administration in rural areas; they take the holding which is being held and used by peasants for many years, alleging that the holding is accessed illegally by changing kebele communal land to privet holding.

- ✓ The second point is non-observance of rules and regulations governing rural land. For instance, one of the cases discussed above is brought to the court directly, while first touch right is vested on Kebele LACs. Even courts see the case without investigating the procedural matters provided under the law. In addition the land holdings which are a base for court litigations were accessed without following the procedures provided under rural land related rules and regulations.

[264] *Nuredin Ahmed vs. public prosecutor* (2010E.C) Civil File no. 07767 (SNNPR Guraghe Zone Cheha Wereda Court)

- ✓ As it can be understood from the wordings of the letter that, the size of the holding given is 12 zeng (i.e. one hectare), which is in conformity with the minimum holding size requirement.

4.3.Current Challenges Pertaining to Rural Land Holding and Use in Guraghe Zone

4.3.1. Perception of Holders Towards Eucalyptus Tree

Eucalyptus tree is most profitable to grow for rural households, thus, planting them on the nearest farms for security.[265] In addition, local perceptions, norms and attitudes towards tree planting differ from the rules stated by the law.[266] According to the researchers' field observation, almost all rural holders residing around highland area of Guraghe Zone plant eucalyptus tree on half or one third portion of their holding. Furthermore according to the land use study and plan in some kebeles of Enemorina Ener woreda, majority of holders use the holding for what they prefer than what the law says.[267] The tree planted is loaded to Addis Ababa and used for domestic. The researcher understood from informants that, daily on average of 12 loads or '*biajo*' of Isuzu care is transported to Addis Ababa from Enemorina Ener woreda.[268]

The researcher noted from informants that the one who have no eucalyptus cultivated on his holding is considered to be poor. The peasants argue that, planting tree has better economic benefits than cultivating crops. Using cultivable land beyond its purpose has its own impact; and practically it is difficult to stop it for, there is no land use plan. The rural land holders do not know what the law provides; rather they use the holding in accordance with the traditional

[265] Stain Holden, Klouse Deininger and Hosaena Ghebru, 'Impacts of Low-cost Land Certification on Investment and Productivity' (2007)19 < https://www.cmi.no>file > accessed March 27, 2019
[266] Ibid
[267] Group interview with Sebsbie Kore, Bizuwerk, Abdulwehab Nasir and Tegenu Degegu, officers of Enemorina Ener Woreda Agriculture and Natural Resource office: land administration Unit (Gunchire, March 13, 2019); interview with Tesfu Asrat, local elder at Enemorina Ener woreda (Gunchire, March 26, 2019); and Interview with Tesfu Asrat, Sebrato Lenchaga
[268] Interview with Romedan Badwork, officer at Enemorina Ener woreda revenue office (Gunchire, April 20, 2019)

method of using land. In addition they don't want government intervention regarding the purpose they are engaged in.[269] It is challenging to avoid tree plantation on arable land for; they get more money than cultivating food crops. In most farms of house hold the size of the holding left for tree plantation is more than the area covered by food crops. According to informants;

> "…the government made a campaign at zonal level in collaboration with other cooperative and administrative offices in 1996 E.C. to remove eucalyptus tree which is planted on arable land holdings. The operation has no legal basis; rather it was based on the political direction and government involvement."

Due to absence of legal bases and resistance of peasant holders the operation was not successful. Above all, food security is one of the challenge in which the government works on it. However planting trees on arable land, while there is shortage of food to be consumed, seems a paradox. According to studies the proportion of 60 households who reported food shortage is 47 percent in SNNP where Guraghe zone resides.[270]

4.3.2. Migration of Rural Youth

There is growing youth landlessness in rural areas and insignificant rural job creation, potentially leading to an increase in migration to urban areas.[271] According to Zemen, youngsters prefer to move to towns either on a temporary or permanent basis and work in micro enterprises, construction industry and service sectors.[272] Policymakers usually define 'youth' in terms of age,

[269] Sebsbe Kore officers of Enemorina Ener Woreda Agriculture and Natural Resource office: land administration Unit (Gunchire, March 13, 2019);
[270] CSA and World Bank Ethiopian Rural Socio Economic Survey' 2013 Survey Report May 7th 2013, 59
[271] Nzinga H. Broussar and Tsegaye Gebrekidan Tekleselassie, 'Youth Unemployment: Ethiopia Country Study' (2012) IGC Working Paper 12/0592 august 2012; 2
[272] Zemen Haddis Gebeyehu (n24)7

not always agreeing on start and end. The Ethiopian Government Youth Policy covers the ages 15-29.[273]

Most of the rural youth in Guraghe Zone prefer to move around newly emerging rural towns in the zone or other regions for betterment of their livelihood. They like to work in the nearby town as a source of daily income rather than engaging in agricultural activity. It is because; they think that those who work in town are more civilized.[274] Motorbike, a three tire motor or locally named '*bajaj'* business and loading, are activities in which youth are engaged in and taken as a livelihood option. In some instances they compel their family to sell part of their holding and buy motorbike for them instead to work on it. The female prefers to move abroad (Arab countries like United Arab Emirates, Saudi Arabia and Qatar) and to work on micro business like *'ye-jebena buna'* to support their family financially.

Those who have no work spend their time by drinking alcohol, smoking and chewing '*khat*' which is a drug composed of the leaves of a wild, East African shrub called Catha edulis, which contain two main stimulants like, cathinone and cathine, which are dangerous to health.[275] Informants revealed that, most of the rural youth chew chat for the reason that it is best opportunity to kill the which resembles long to pass without working and they starts it because they urges to tray or to see new phenomena.[276] However it is believed that it has social, economic and health related impacts. So there must be programs which sustainably transform the livelihood those youths in collaboration with other stalk holders.

4.3.3. Inheritance as A Factor for Fragmentation

[273] Philippa Bevan Rebecca Carter and Agazi Tumelissan, 'Long Term Perspectives on Development Impacts on Rural Ethiopia: Youth on the Path to Adulthood in Changing Rural Ethiopia' (2011) 8
[274] Interview with Getu Kora, focal person of AGP in Enemorina Ener woreda (Gunchire, 23/04/ 2010E.C)
[275] Elizabeth Hartney, 'Khat Drug Effects, Addiction, and Risks' updated March 23, 2019 < https://www.verywellmind.com/what-is-khat-22092 > accessed March 27, 2019
[276] Getu Kora, focal person of AGP in Enemorina Ener woreda (Gunchire, 23/04/ 2010E.C)

The rural land administration and use proclamation of SNNP provides that the size shall not be less than half hectare if the land is cultivable by rain, and it may not be more than half hectare when the land is constructed on the expense of government cost and cultivable through irrigation.[277] The regulation deals with use of rural land holding among orphans who lives with legal guardians; thus it provides that if the holding is less than 0.5 hectare they should use the land jointly. And if there is in-convenience to use the land jointly, they can rent and share the income among them.[278] According to informants the average size of land holding in Guraghe Zone is 1 hectare. The holder uses his holding for different purpose as discussed above in one and another way.[279]

However some informants indicated that, there is land fragment due to in-house partition of the holding.[280] Most of youngsters who live with their family and having no other means of livelihood access rural land from family. There is also population pressure which exacerbates diminution of the size of the holding. Particularly in Guraghe zone there is a traditional practice which fuel the population increase like; bigamy and desire for male siblings (i.e. having only female children are not accepted traditionally). Due to this the holding becomes more fragmented and going to be fragmented.

4.3.4. Rural Land Rent; the Reality

There is no official land market but local institutions had evolved to match supply and demand including sharecropping, renting and leasing land. There is occasional illegal land-selling which involves bribing of *kebele* leaders. Currently problems related to land rent contract is the main issue which raise dispute among peasants as discussed in the previous section. The peasant sells

[277] SNNPR Rural Land administration and Use Proclamation, proc. No.110/2007 Art.11 (1)
[278] SNNPR State Rural Land Administration and Use Regulation, Reg. No.66/2007 Art .5 (3) b and Art.5 (4) a
[279] Interview with Adulwhab Nasir, officer of Woreda Land Administration in Enemorina Ener woreda (Gunchire, 23/04/ 2010E.C)
[280] Kflework Tezera, officer at Gumer Woreda prosecutors office, (Arekit April 5, 2019)

the land using legal opportunity to transfer with rental contract. In this case they enter in to two different contracts; the contract of rent because the law prohibits land sell and they fear that it could be canceled and contract of sell for the buyer needs evidence.[281] In most cases the second agreement (i.e. the sale contract) not made in formal way, rather it is made based on traditional systems of *qicha* for it is more secured and trustworthy. Rental agreements that transfer land-use rights require the consent of the wife, and upon divorce, husband and wife share rights over the landholding. However practically there are some instances in which the wife did not give her consent. Above all, the size of the holding is not considered for they transfer the holding by using traditional measurement mechanisms. This also contributes for fragmentation of holding sizes.

Even though the Supreme Court decided in different cases that claims related to cancelation of contract of sale of land has no cause of action, the transferor request for cancelation of sell contract mostly initiated by wife or children claiming that it is illegal. There are also claims of cancellation of rent contract, which is mostly initiated by wife or siblings for they did not give their consent.

4.3.5. Problems Land Administration Pertaining to LACs

According to SNNPR rural land proclamation; when there is dispute among two peasant holders LACs have a facilitative role by letting the parties to negotiate through arbitration of elders appointed by the choice of disputing parties.[282] However in some cases the LACs enter into activities which are beyond their role or power. One of the activities is they give a letter of agreement to both disputing parties after they have entertained the case; for it is relevant to the un-satisfied parties to go through appeal to other organ. But the problem is, they act as a decision

[281] Interview with Sebrato Lenchaga, leader of Enemorina Ener woreda counsel and local elder (Gunchire, March 28, 2019); and Aregash Girma, president of Cheha woreda court (Emdibir, April 03, 2019)
[282] SNNPR rural land administration and use proclamation no.110/2007, Art.12 (1)

maker in every aspect and use in the letter they gave to parties the Amharic term *'□□□□□'*, this means "we have decided", while the law is clear that they cannot give decision.[283]

The other activity is the LACs have a duty to see, proof and give information when they are requested by pertinent organization regarding the land holding in their jurisdiction. However in most cases they write the letter of information or evidence requested sitting on the chair in the office without observing the actual condition of the holding. This has its own impact on the rights of holders, delivery of faire decision trough courts and transmission of correct information to administrative bodies.

Finally, the LACs play pivotal role in violation of restrictions and limitations provided under the law. In this case they play facilitative role and they legalize the transactions or agreements entered with violation of the law.

4.3.6. Lack of Awareness

The other challenge is lack of awareness regarding what the law says. The community does not know the conditions or requirements provided under the land law. That's why no one exercises his/her right and duties as intended by the law.[284] Every peasant knows the Constitutional ban of land transfer through sell and mortgage. However they did not know the detail provided under the law regarding rural land holding. For instance, they did not have any idea as to the restrictions in relation to rural land holding and use right transfer provided under the law.

This indicates that institutions, like zonal and woreda level land administration offices, courts and justice office are expected to work more on to boost legal understanding of rural land holders. So those institutions must work hard to fill knowledge gap in collaboration with other

[283] Interview with Nursefa Lema special advocate at any court in Ethiopia, (wolkite, April 14, 2019)
[284] Ibid

stalk holders like non-governmental organizations operating in Guraghe Zone, Wolkite FM. radio and Wolkite University.

4.3.7. Women's Statutory Right vs. Traditional Practices

Form experience of Guraghe zone the cultural dominance and socially accepted practice affects applicability of the law and implementation of the right. This is reflected particularly in the area of implementation and enforcement of rights recognized regarding women's access to rural land. Though there are women who let their right in relation to rural land to their family members in the intent of supporting them; the rest of them wants to have and use the land holding they accessed (i.e. either by judicial partition of property after divorce or inheritance and donation). As discussed above the law recognizes women's right to access and control rural land. In addition they have the right to register their holding in their name and get certificate.

However there are problems in implementation of those legally recognized rights. The first problem is husbands raise defense that the property or the land holding is not partitioned. The courts accept the defense without investigating presence of parties who have vested interested in the holding and let the women in bare hand.[285] The other problem is having certificate by itself dos not ensure their right to access and control. Because the tension comes to picture when women want to use their rights and take legal action. In this case the local men group refuses and opposes its implementation. One of mechanisms mostly employed to show their refusal is damaging the property developed on the holding.

4.4.Opportunities Related to Land Tenure Guraghe Zone

4.4.1. Establishment of Land Administration and Use Study

[285] Nursefa Lema legal special advocate at any court in Ethiopia, (wolkite, April 14, 2019)

The law requires land administration institutions to establish a system of study that focus on identification of problem and land administration use and recommend solutions.[286] Such study is ongoing at zonal level in four sample woredas. Accordingly, the land administration office in collaboration with AGP made a study in 2011 E.C. within sample Kebeles of Cheha, Gumer, Enemorina Ener and Endegagn woredas.[287]

The land administration officers informed the researcher that;

> "In the near future we have planned to make another operation to implement proper land use policies. The operation has two phases; first plan is to work on awareness creation. Secondly, the office is planned to take necessary measures provided by the regional land law and land use polices against those who are; using the holding for grass, planting tree."

This measure will be taken on those who are not engaged in agricultural activity and the live out of the holding for several years without appointing representative who works agricultural activities and conserves.

4.4.2. Land Access for Rural Youth Agro-enterprises

According to Plan for Accelerated and Sustained Development to End Poverty (PASDEP) job is created through private sector participation, with particular emphasis given to Micro and Small Enterprises.[288] Rural land is granted to those who form enterprise to engage in agricultural activities. The enterprise may hold a minimum of 0.25 hectare and maximum of 16 hectare based

[286] FDRE Land administration and Use proclamation No.456/2005 Art.15
[287] Interview with Melaku Benti, unit leader of land administration unit in Cheha woreda agriculture and natural resource office (Emdibir, April 3, 2019)
[288] Nzinga H. Broussar and Tsegaye Gebrekidan Tekleselassie (n271)7

on the essence of formation of the enterprise and their activities. The land can be accessed from kebele communal land, through decision of administrative bodies.[289]

4.4.3. Support and Land Holding Access to Former Militia Members

Though it is not legal or it has no legal ground, the former militia or military members who want to reside and to form their livelihood in Guraghe zone, access rural land holding. There is also a condition that must be fulfilled; thus, the militia member should submit application letter for request of the holding showing that he/she has no alternative means of livelihood; and the administrative bodies should accept and decide on the application.[290]

4.5.Evaluation of Applicability of the Requirement; Thesis Objective

This section evaluates some important aspects raised in the objective in relation to the experience founded in the study area. Accordingly, the author raised a standard check points and provide the finding.

- Is there any land distribution or voluntary settlement program which was accompanied by the current regime; there is no such programs yet, land holding is accessed only via family inheritance or donation.
- Is the land holding fragmented or not; there is fragmentation of holdings due to in-house land holding and use transfer through modes of inheritance and donation.
- Is there voluntary land consolidation program to decrease/prevent land fragmentation which was made in the study area; there is no consolidation program.
- Is the holding of farmers in line with the minimum size requirement provided under the law; the average holdings of the study area are not less than the legal minimum size requirement, rather they are reported as 1 hectare.

[289] Tsegaye Alemayehu, Officer at Youth and Sport Office of Enemorina Ener woreda (Gunchire, April 14, 2019)
[290] Mehbub Abdo Berhanu Bekele

- Is the legal restrictions provided under the law applicable; the legal restrictions, requirements and limitations like; size and duration of rental land transaction, are not respected.
- Is there any impact on exercise and transfer of land rights pertaining to legal restrictions and requirements; yes, there are implications which can be taken as impacts of restriction such as; increase in informal land deal and limited opportunity of rural land holding access.

Table 1 Summery of the experience discussed; mismatch between the law and practice

	What the laws and polices provide	**What actually is happening**
1	Land shall not be sold/mortgaged	There is disguised land transfer
2	To avoid fragment; holdings below minimum size should not be transferred	Transfer of family inheritance is dominant, which leads to fragment
3	Transfer; restriction (time and size) and registration	No registration; not consistent with size and time restriction
4	Everyone has equal right to access and use the land from his/her family	Women gets monetary value than land holding for traditional perception
5	Livelihood (having no other income)	Servants and traders have holdings
6	Family member who lives with and sharing livelihood of holder	Family member is the one who have blood relationship with the holder
7	Encourage land consolidation; voluntary resettlement programs	No consolidation and voluntary programs

Source: Own

4.6. The Need for Policy Reform and Recommended Options

Following evaluation of experience and realities the researcher found that frame works of land policy and legal conditions provided under rural land law is failed to mate their objective. The land policy and legal regime prohibits transfer of land holding through contract of sale or other means of exchange and mortgage.[291] Since the regional land policies should follow the same approach with federal one they recognize state and peoples ownership of land and holders have usufractory rights with limitation on transfer rights.[292]

However, the debate on the current land tenure policy of Ethiopia is still regarded as basic concern.[293] According to the official statements of the government, state ownership of land helps to prevent farmers from selling, mortgaging or transferring their land and becoming landless. On the other hand researchers and scholars like, Byamugisha argue that there is a need to reform to avoid or eliminate controls and restrictions on land markets. Experience in Ethiopia shows that where and when there were fewer restrictions on land rental markets, land rental activities went up and eased land access for the land poor and impacted significantly on productivity.[294]

Not only the scholarly debate, but the reality on the ground shows that there is a need to make some adjustment. For instance as elaborated above, in the experience of Guraghe Zone the prohibition provided under the Constitution and other land related legislations is not practically observed. This raises the issue of necessity of reform on the current land policy.[295] Furthermore, duration of Land rental contract is one of the most critical terms of contract of rent, owing to its effect on tenants' motivations to improve or invest in the land, or simply make it productive. Its

[291] The FDRE constitution Art.40(3) and the preamble of EFDR Rural land administration proc. No. 456/2005

[292] See the Revised Amhara National Regional State Rural Land Administration and Use proclamation, Proc. No.133/2006 Art.5 (1); Benishangul-Gumz Regional State Rural Land administration and Use Proclamation, proc. No.85/2010 Art.5 (1); and the preamble of SNNPR rural land administration and use proclamation no.110/2007;

[293] Beyene Chekol, 'Contending Views on Land Tenure System in Ethiopia: Historiographical Essay' (2017) African Journal of History and Culture Vol.9(1)1

[294] Frank Byamugisha (199)16

[295] Interview with Nursefa Lema legal attorney at any court in Ethiopia, (wolkite, April 14, 2019) and Aregash Girma

impact is even more critical in Ethiopia, where land is state owned and individual land ownership is characterized by massive tenure insecurity.[296] According to Deniniger and Jin, better functioning of land rental markets could help the economy to realize considerable gains in productivity. Particularly for countries like Ethiopia, Bangladesh and India that aim to make the transition from an agricultural to a more diversified economic structure but have, for various reasons, restricted the scope for operation of land rental markets.[297]

There are policy options provided by different scholars; for the purpose of this section theoretical models to land policy reform are highlighted.[298] Neo-classical model is the first one that argues, land tenure affects the economic condition and achievement of development objectives. The land tenure security must be based on ensuring full individual right which includes the right to sell and mortgage to the in relation to the land. Tenure security and economic development are some of the positive outcome of protection of higher land right.[299]

The other one is institutional model; according to this model, there is no need to change or reform to the land law or policy. Mismatch between polices or strategies and the practice are not created by the policy frame works and in some cases problem of institutions which are created to implement those frameworks have their own role. Accordingly economic development and tenure security can be achieved by improving the governance system and building institutional capacity.[300]

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[296] Abebe D. Beyene, Mintwab Bezabih and Zenebe Gebreegziabher, 'Contract Duration Under Incomplete Land Ownership Rights: Empirical Evidence from Rural Ethiopia' (2012) EfD Discussion Paper Series EfD DP 12-09,1

[297] Klaus Deniniger and Songqing Jin, 'The Potential of Land Rental Market in The Process of Economic Development: Evidence From China' (2005) Journal of Economic Development 78, 241

[298] Peter J. Bodurtha, Justin Caron and Jote Chemeda, 'Land Reform in Ethiopia: Recommendations for Reform' (SMNE, 2011) 1 available at <https://conservancy.umn.edu>han> accessed December 1, 2018

[299] B. Nega, B. Adenew and S. GebreSelasie, 'Current Land Policy Issue in Ethiopia' (2004) Ethiopian Economic Research Institute 103

[300] Daniel Behilu Gebreamanuel (n123)203

The other option is associative model which argues that, we can compromise the above two models by protecting customary practice and institutions to come up with good governance of land and tenure security.

In addition it is also recommend that we should follow a hybrid approach for land policy reform; which maximize land tenure security, promote equity, improve the efficiency of land markets, and be feasible within Ethiopia's current institutional and political environment. Informants also raised their view that, it is important to adopt a policy which recognizes transfer of holding by contract of sale with size limit restriction like transfer of holding through rent. Because most of land holder in rural area is poor and they want to use what they have in their hand when they face financial problem. In addition restrictions on rental transfer should be revisited to come up with a more liberal approach.[301]

To sum up, we may adopt different policy models which are feasible for different areas throughout the country. In any case the ultimate objective of the reform must be to move forward the economy of the country and boosting the tenure security and confidence of farmers. In addition any policy adjustment should be in line with international human right and accepted guiding principles of good land governance. Furthermore the policy lines should be designed to facilitate the general economic development of the country and to the specific economic use of the land for holders.

[301] Interview with Aregash Girma, president of Cheha woreda court (Emdibir, April 03, 2019)

CHAPTER V: CONCLUSSION AND RECOMMENDATION

The critical role of land for socio-economic development and poverty reduction is not questionable. The terms on which land is accessed, used and transferred has important impact on economic development and equitable wealth distribution. Access to land is the having opportunity to control, use and transfer land and other resources. This is important for the rural poor, who depends on agriculture and related activities for their livelihood but majority of them did not access land for different reasons. One of the reasons is state fabricated stringent requirements or conditions provided by the policy and legal frameworks.

The negative impacts of land fragmentation, (which is caused by customary land tenure system and shifting cultivation) on land transactions and agricultural productivity are widely documented. Many countries provide policy instruments of restriction to protect land fragment and promote consolidation through formal consolidation programs. Policy instruments include; restrictions on nationality and residency, size of the holding; sale price; and rent/lease price and duration. The conditions to access rural land provided by policy and legal frameworks vary from jurisdiction to jurisdiction.

For instance, in Switzerland, division of agricultural land for non-agricultural purposes is forbidden while in Canada and Poland, there is restriction on size which can be transferred to foreigners by contract of sale for it is affecting rural communities by dominating local agricultural interests, with negative impacts on the availability of farmland for residents. In Rwanda for the purpose of land use consolidation, it is prohibited to subdivide plots of land reserved for agriculture and animal resources if the result of such subdivision leads to parcels of land of less than a hectare in size for each of them. In Ghana, there are restrictions on sales of customary land to non-community members imposed by customary law

The frameworks in Ethiopian land law recognize the right to equal access for free, use and transfer of rural land holdings. However, it is difficult to access rural land due to; the complexity, strict limitations and requirements provided by policy and legal frameworks. The Ethiopian land law provides requirements to hold rural land. Age, residence, engagement in agriculture for livelihood, family membership to inherit holding/use rights and farm size requirements are among the legal conditions/restrictions provided under the law to access rural land are discussed. Furthermore, impact of the requirement on transferability of land rights is also highlighted.

The thesis discussed practical evidences and issues pertaining to applicability of land holding requirements under experience of Guraghe zone. Issues related to mechanisms of access and transfers of holding rights were discussed in detail in particular reference to the size minimum holding size. There is a clear in-compatibility with what the law says and the practice. Traditional perceptions and their complexity are prevailing over the objective of the statutes particularly, in the area of women right to land. There is also transfer of land holding without observing what the law says and polices are designed. There are also challenges for implementation of the law like; lack of awareness, migration of rural youth, fragmentation of

farm size, and traditional perception towards women. On the other hand there are also important opportunities discussed in the thesis.

The issue of policy is the last point discussed before conclusion. Accordingly the author suggested that, the current government reform is expected to come up with some adjustment on policy and legal frameworks regarding land access in a manner that it could answer the question of land poor (the rural youth and women) in particular. In addition the thesis highlights policy modes which could be taken in to consideration during reform.

Points for recommendations;

- There is a need to make reform on legal frameworks, which eliminate controls and restrictions on access use and transferability of land. The government must review which is supported by studies; on the current polices in a manner that it could satisfy the interest of youth, women pastorals and peasant. Especially the minimum holding size restrictions on access and transfer should be revised.
- There is also necessary to make policy adjustment, which can be made in line with international human right and accepted guiding principles of good land governance. Furthermore the policy lines should be designed to facilitate the general economic development of the country and to the specific economic use of the land for holders.
- The government programs and strategies which are designed for the benefit of the rural youths and land poor must have continuity to the extent that those targeted groups are sustainably benefited.
- Institutions, like zonal and woreda level land administration offices, courts and justice office are expected to work against absence of awareness. The institutions must work hard to fill knowledge gap in collaboration with other stalk holders like non-

governmental organizations operating in Guraghe Zone, Wolkite FM. radio and Wolkite University.

- The traditional institutions particularly ye-ejoka should play a role in awareness creation as a stack holder, for they are important machineries in social engineering. Accordingly they have to take their part in contribution for implementation of the rights and limitations provided under the law.
- The land use study started in some sample woredas of Guraghe Zone is a good experience which can be expanded to the rest of the area zonally and even regionally.
- There must be awareness creation and encouragement of voluntary consolidation programs to prevent land fragmentation.

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Annex1. List of Cases

1. Engeta Egzaga vs. public prosecutor (2011E.C) Civil File no. 11735 (SNNPR Guraghe Zone Enemore and Ener Wereda Court)
2. Heriya Lika vs. Gemal Sani (2009E.C) Civil File no. 10233 (SNNPR Guraghe Zone Enemorina Ener woreda Court)
3. Nuredin Ahmed vs. public prosecutor (2010E.C) Civil File no. 07767 (SNNPR Guraghe Zone Cheha Wereda Court)
4. The Supreme Court of Ethiopia Cassation Decision 2007, Vol.18 case no. 109776
5. The Supreme Court of Ethiopia Cassation Decision 2007, Vol.19 case no. 105092
6. The Supreme Court of Ethiopia Cassation Decision 2008, Vol.19 case no. 108335

7. Tofik Bedewi, Mohammed Negash and Emam Bedewi V Gomshe Kebele Administration (2011E.C) Civil File no. 11596 (SNNPR Guraghe Zone Enemore and Ener Wereda Court) decided on 18/10/2010E.c.
8. Tofik Bedewi, Mohammed Negash and Emam Bedewi vs. public prosecutor (2011E.C) Civil File no. 12418 (SNNPR Supreme Court) decided on 29/05/2010E.c.

Annex2. Questions used for interview

1. How or in what mechanism (conditions) the rural youth, miners and women access rural land holding in Guraghe zone, woreda or kebele.
2. Does the rural women access, use and transfer rural holdings equally with that of male
3. Minimum size of holdings they accessed
4. How the land holders transfer their holding and use right
5. Do you think that the practice of land access, use and transfer, is in line with the law in Guraghe Zone (in your woreda or Kebele)
6. How do u see the legality of practices used to access rural land holding in Guraghe Zone (in your woreda or Kebele)
7. What is the role of traditional practices in implementing land holding and use rights of women
8. How do you see the relationship between applicability of rights provided by the law and traditional perception of the community
9. How do you see the applicability of legal conditions to access rural land; like residence, engagement in agriculture for livelihood in Guraghe Zone (in your woreda or Kebele)
10. Do you think that the legal conditions have relevance;
11. For what purpose land holders use their holding

12. How do they transfer their holding in Guraghe Zone (in your woreda or Kebele)
13. How do you see the size of holders (minimum size of the holding); in Guraghe Zone (in your woreda or Kebele)
14. What do you do for applicability of the rights and conditions provided by the law regarding rural land holding in Guraghe Zone (in your woreda or Kebele);
15. What must be done in future for applicability of the law and to implement women rights
16. How do you evaluate the relationship between legal conditions to access rural land and other policy line
17. How do you see the current land policy; do you think that it needs reform?
18. Which approach is recommended?

Annex3. List of informants

1. Abdulmena Mudsir, rural Youth Enemorina Ener woreda (Gunchire, April 14, 2019)
2. Abdulwehab Nasir officer of Enemorina Ener Woreda Agriculture and Natural Resource office: land administration Unit (Gunchire, March 13, 2019)
3. Abrar Zerihun, Registrar of Cheha woreda court (Emdibir, April 03, 2019)
4. Adulwhab Nasir, officer of Woreda Land Administration in Enemorina Ener woreda (Gunchire, 23/04/ 2010E.C)
5. Almaz Bmenga, Chairperson at women and children affairs office of Enemorina Ener (April 11, 2019)
6. Aregash Girma, president of Cheha woreda court (Emdibir, April 03, 2019)
7. Asenbit Bedru local resident at Ezxa woreda (Agena, April 17, 2019)
8. Ashenafi Birega, Public prosecutor at Gumer woreda prosecutor office (Arekit, April 5, 2019)

9. Berhanu Bekele, officer of Land Administration Directorate in Guraghe Zone agriculture and natural resource directorate (Wolkite, April 10, 2019
10. Bizuwerk, officer of Enemorina Ener Woreda Agriculture and Natural Resource office: land administration Unit (Gunchire, March 13, 2019)
11. Defar Alemu, Registrar at Enemorina Ener woreda court (Gunchire, March 13, 2019)
12. Degu Abrar, Unit leader in association unit under cooperative office of Enemorina Ener woreda (Gunchire, March 25, 2019)
13. Desalegn Bireda, public prosecutor in Enemorina Ener wereda justice office (Gunchire, March 13, 2019EC.)
14. Gashe Gobiye, rural land administration committee Enemorina Ener woreda, (Hurred Keble March 28, 2019)
15. Getu Kora, focal person of AGP in Enemorina Ener woreda (Gunchire, 23/04/ 2010E.C)
16. Hile Melis, officers at militia office at Enemorina Ener woreda (Gunchire, March 12, 2019)
17. Jemil Yssin, attorney at Enemorina Ener woreda court (Gunchire, March 13, 2019)
18. Kalid Bedru, judge at Enemorina Ener woreda court (Gunchire, March 13, 2019)
19. Kebele Kassa, president of Gumer woreda court (Arekit, April 05, 2019)
20. Kegnu Mulu, lecturer in Law School of Wolkite University (wolkite, April 14, 2019)
21. Kflework Tezera, officer at Gumer woreda prosecutor office (Arekit, April 5, 2019)
22. Kidist Abirde, rural Youth Enemorina Ener woreda (Gunchire, April 14, 2019)
23. Mechal Mare, local elder at Exza woreda (Agena, April 9, 2019)
24. Mehbub Dino, officers at militia office at Enemorina Ener woreda (Gunchire, March 12, 2019)

25. Meksud Reshid, rural Youth Enemorina Ener woreda (Gunchire, April 14, 2019)
26. Melaku Benti, unit leader of land administration unit in Cheha woreda agriculture and natural resource office (Emdibir, March 13, 2019)
27. Mesfin Anteneh, rural Youth Enemorina Ener woreda (Gunchire, April 14, 2019)
28. Mikrachew Yirgago, rural Youth Enemorina Ener woreda (Gunchire, April 14, 2019)
29. Murad Zerga, officers at militia office at Enemorina Ener woreda (Gunchire, March 12, 2019)
30. Neja Abdulbasit, government official of land administration office in Enemorina and Ener woreda (Gunchire, March 13, 2019EC.)
31. Nesru Atumza, legal officer at women and children affairs office of Enemorina Ener (April 11, 2019)
32. Nursefa Lema legal attorney at any court in Ethiopia, (wolkite, April 14, 2019)
33. Romedan Badwork, officer at Enemorina Ener woreda revenue office (Gunchire, April 20, 2019)
34. Sahiba Kedir, Registrar at Enemorina Ener woreda court (Gunchire, March 13, 2019)
35. Sebrato Lenchaga, leader of Enemorina Ener woreda counsel and local elder (Gunchire, March 28, 2019)
36. Sebsbie Kore, officer of Enemorina Ener Woreda Agriculture and Natural Resource office: land administration Unit (Gunchire, March 13, 2019)
37. Tebarek Abdo, officer at women and children affairs office of Enemorina Ener (April 11, 2019)
38. Tegenu Degegu, officer of Enemorina Ener Woreda Agriculture and Natural Resource office: land administration Unit (Gunchire, March 13, 2019)

39. Tesfu Asrat, local elder at Enemorina Ener woreda (Gunchire, March 26, 2019)
40. Tofic Asenbit, attorney at Enemorina Ener woreda court (Gunchire, March 13, 2019)
41. Tofik Abesha, local elder at Enemorina Ener woreda and former land administration committee member and administrator in Enangera Kebele (Gunchire, March 26, 2019)
42. Tsegaye Alemayehu, Officer at Youth and Sport Office of Enemorina Ener woreda (Gunchire, April 14, 2019)
43. Tsegaye Tekle, authentication and registration of documents unit leader at Guraghe Zone Public Prosecutor Directorate (wolkite, April 14, 2019)
44. Wolde Temesgen, judge at Enemorina Ener woreda court (Gunchire, March 13, 2019)
45. Zinash Abera, rural Youth Enemorina Ener woreda (Gunchire, April 14, 2019)